IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825(MBK)
	.	
	.	Clarkson S. Fisher U.S.
LTL MANAGEMENT LLC,	.	Courthouse
	.	402 East State Street
	.	Trenton, NJ 08608
Debtor.	.	
. . . . .	.	
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092 (MBK)
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
THOSE PARTIES LISTED ON	.	
APPENDIX A TO COMPLAINT and	.	
JOHN AND JANE DOES 1-1000,	.	
	.	Tuesday, May 9, 2023
Defendants.	.	1:00 p.m.
. . . . .	.	

TRANSCRIPT OF HEARING ON STATUS CONFERENCE REGARDING MOTIONS TO DISMISS THE CHAPTER 11 CASE [DKTS. 286, 335, 346, 350, 352, 358, 379, 384] AND OBJECTIONS THERETO; AND REQUEST OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS FOR ORDER CERTIFYING DIRECT APPEAL OF PRELIMINARY INJUNCTION ORDER OF APRIL 20, 2023 TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT [ADV. DKT. 84] AND OBJECTIONS THERETO; AND PAUL CROUCH MOTION AND JOINDER FOR AN ORDER CERTIFYING DIRECT APPEAL OF PRELIMINARY INJUNCTION ORDER OF APRIL 20, 2023 TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT [ADV. DKT. 89] AND OBJECTIONS THERETO; AND MOTION OF AD HOC COMMITTEE OF SUPPORTING COUNSEL TO INTERVENE [ADV. DKT. 104] AND OBJECTIONS THERETO

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES:

For the Debtor:	Jones Day By: GREGORY M. GORDON, ESQ. DAN B. PRIETO, ESQ. AMANDA S. RUSH, ESQ. 2727 North Harwood Street, Suite 500 Dallas, TX 75201 Skadden Arps Slate Meagher & Flom, LLP By: ALLISON M. BROWN, ESQ. One Manhattan West New York, NY 10001
For Ad Hoc Committee of Certain Talc Claimants and Ad Hoc Committee of Creditors:	Genova Burns LLC By: DANIEL M. STOLZ, ESQ. 494 Broad Street Newark, NJ 07102 Brown Rudnick LLP By: JEFFREY L. JONAS, ESQ. DAVID J. MOLTON, ESQ. MICHAEL WINOGRAD, ESQ. 7 Times Square New York, NY 10036 Brown Rudnick LLP By: SUNNI BEVILLE, ESQ. One Financial Center Boston, MA 02111 Otterbourg PC By: MELANIE CYGANOWSKI, ESQ. 230 Park Avenue New York, NY 10169
For the Office of the United States Trustee:	Office of the United States Trustee By: LINDA RICHENDERFER, ESQ. JEFF SPONDER, ESQ. LAURA DAVIS JONES, ESQ. J. Caleb Boggs Federal Building 844 King Street, Suite 2207 Lockbox 35 Wilmington, DE 19801

APPEARANCES CONT'D:

For Anthony Hernandez Valadez:	Kazan McClain Satterley & Greenwood By: JOSEPH SATTERLEY, ESQ. 55 Harrison St. Suite 400 Oakland, CA 94607
Various Talc Personal Injury Claimants:	Watts Guerra LLP By: MIKAL C. WATTS, ESQ. 5726 W. Hausman Road, Suite 119 San Antonio, TX 78249
For Various Talc Claimants:	Maune Raichle Hartley Frency & Mudd, LLC By: CLAYTON L. THOMPSON, ESQ. 150 West 30th Street, Suite 201 New York, NY 10001 Levy Konigsberg, LLP By: JEROME H. BLOCK, ESQ. MOSHE MAIMON, ESQ. 101 Grovers Mill Road, Suite 105 Lawrence Township, NJ 08648 Simon Greenstone Panatier, PC By: LEAH CYLIA KAGAN, ESQ. 1201 Elm Street, Suite 3400 Dallas, TX 75720
For Claimant Alishia Landrum:	Beasley Allen By: ANDY BIRCHFIELD, ESQ. 218 Commerce Street Montgomery, AL 36104
For Arnold & Itkin:	Pachulski Stang Ziehl & Jones LLP By: LAURA DAVIS JONES, ESQ. 919 North Market Street 17th Floor Wilmington, DE 19801
For Paul Crouch, individually and on behalf of Estate of Cynthia Lorraine Crouch:	Ruckdeschel Law Firm, LLC By: JONATHAN RUCKDESCHEL, ESQ. 8357 Main Street Ellicott City, MD 21043

APPEARANCES CONT'D:

For the Ad Hoc Committee of Attorneys General:	Womble Bond Dickinson By: ERICKA JOHNSON, ESQ. 1313 North Market Street Suite 1200 Wilmington, DE 19801
For Randi Ellis, Proposed Future Claims Representative:	Walsh Pizzi O'Reilly Falanga LLP BY: LIZA M. WALSH, ESQ. Three Gateway Center 100 Mulberry Street, 15th Floor Newark, NJ 07102
For Ad Hoc Committee of Supporting Counsel:	Paul Hastings, LLP By: KRIS HANSEN, ESQ. 200 Park Avenue New York, NY 10166
For Ad Hoc Committee of Mesothelioma Claimants:	Gupta Wessler PLLC By: DEEPAK GUPTA, ESQ. 2001 K Street, NW Suite 850 North Washington, D.C. 20006
For the Talc Claimants Committee:	Massey & Gail LLP By: JONATHAN S. MASSEY, ESQ. The Wharf 1000 Maine Avenue, SW Suite 450 Washington, D.C. 20024

- - - - -

(Proceedings commenced at 1:00 p.m.)

THE COURT: Okay. We are up and running.

Good afternoon, everyone. This is Judge Kaplan, and we are here in the LTL Management, LLC matters on for today.

All right. Let me turn to debtor's counsel. Do you have a preference on what matters we begin with?

MR. GORDON: Greg Gordon, Your Honor, Jones Day on behalf of the debtor. I don't think so. I think we've got the issues related to the motions to dismiss --

THE COURT: We have --

MR. GORDON: -- and then the certification question, as well.

THE COURT: Well, we have the intervention motion, correct?

MR. GORDON: Correct.

THE COURT: We'll talk about scheduling on the motion to dismiss.

MR. GORDON: Right.

THE COURT: The motions for certification.

MR. GORDON: Correct.

THE COURT: And the Court has also has a ruling on the FCR.

MR. GORDON: Correct.

THE COURT: So I'll do the ruling at the end.

MR. GORDON: Okay.

THE COURT: Keep you all in suspense. And then let's get to the heart of it. Let's get to the certifications.

Good morning.

MR. MASSEY: afternoon, Your Honor. Jonathan Massey, the proposed counsel to the TCC. I have a PowerPoint. If I may approach, I'll --

THE COURT: Sure.

MR. MASSEY: And I also tried to do it on the

THE COURT: The Federal Circuit has page limits. I'm thinking about having PowerPoint slide limits.

MR. MASSEY: Well --

THE COURT: But this is only 12.

MR. MASSEY: Yeah, this is a -- this will hopefully meet with your approval at least on that. And I will try to share my screen so that I can do the -- apologies.

(Pause)

MR. GORDON: Your Honor, I would note for the record that the intervention motion relates to --

THE COURT: Yeah. I was just actually thinking about that and I guess it would make the most sense to decide who's going to argue or be permitted to argue. So with apologies, Mr. Massey, let me hear the intervention motion.

MR. MOLTON: Judge, can I intervene --

THE COURT: Yeah.

MR. MOLTON: -- and interject for a moment of --

THE COURT: Sure.

MR. MOLTON: -- breaking news?

THE COURT: Breaking news, okay.

MR. MOLTON: Breaking news.

I just got on my cell phone a docket entry from the Third Circuit. Can I read it into the record?

THE COURT: Absolutely.

MR. MOLTON: Docket order from Judge Schwartz, Restrepo, and Ambro, "In order to allow the Chapter 11 proceedings of LTL Management, Inc." -- and I'm going to cut out some of the docket entry numbers -- "to continue on an expedited basis set by the district court, the Bankruptcy Court for the District of New Jersey, in recognizing that the writ of mandamus is a drastic and extraordinary remedy and there are other adequate means for the petitioner to obtain the relief it seeks, the public petition for writ of mandamus of the Talc Claimants is hereby denied."

So I just wanted to let everybody know that especially before we begin this argument, which possibly informs this argument. And it was important for me to get up.

THE COURT: So I'm not off the hook.

(Laughter)

MR. MOLTON: Very good, Judge. And this was David Molton of Brown Rudnick for the proposed counsel for the TCC. So I just wanted to let everybody know.

THE COURT: No. Real breaking news.

MR. MOLTON: Real breaking.

THE COURT: All right. Well, thank you, Mr. Molton.

Let me then -- let's move to the motion to intervene. It does make the most sense.

Counsel, good afternoon.

MR. HANSEN: Good afternoon, Your Honor.

Kris Hansen with Paul Hastings on behalf of the Ad Hoc Committee of Supporting Counsel, otherwise known as the interveners in connection with this motion, Your Honor.

Your Honor, you have the papers. I don't want to necessarily go back over. We have a long day today. I don't want to go back over everything we said in there. But I just want to point out I just basically what I want to do is address some of the objections --

THE COURT: Yes, please.

MR. HANSEN: -- that were raised with respect to the motion. I think it's the easiest way to proceed.

So just so we're all clear, one of the big objections was that the Ad Hoc Committee of Supporting Counsel does not have a 2019 on file. We filed a 2019 last night, Your Honor. It's obviously redacted. We have also filed a motion to submit that under seal --

THE COURT: Right.

MR. HANSEN: -- and to keep the unredacted copy with

the Court. We'll work out with other parties if they want to see it on an unredacted basis some type of appropriate protective order or other type of mechanism in the order with respect to sealing to the extent Your Honor is amenable to doing that, which we hope you are.

That's a living document. It will continue, we believe, to expand as we obtain more information in terms of newer claimants with respect to lawyers that we represent in addition to other lawyers that are signing plan support agreements and coming on as well. The 2019 that we filed is approximately on behalf of 56,000 claimants represented by the law firms that we list in the 2019. It's approximately 15 firms.

THE COURT: I saw that I think it was 1,300 odd pages. I obviously didn't print it or go through it. So I assume, though, it includes some identity of the actual underlying clients, not just the law firms.

MR. HANSEN: Correct.

THE COURT: All right.

MR. HANSEN: So what you have, Your Honor, is, again, we're -- and to be clear because this is a point that the TCC has raised with us repeatedly and it was also put in their objection, right now we are an Ad Hoc Committee of Supporting Counsel. So those are the law firms that represent those claimants who have signed the plan support agreement.

The claimants that they represent under their various retainer letters, as Your Honor can see in connection with the 2019, give them broad authority to act on behalf of their clients, which is pretty standard with respect to these -- not that much different from many of the law firms that serve on the other side of the aisle here. And so for now, we represent the Ad Hoc Committee of Supporting Counsel.

We have Paul Hastings level representing them, all right. We have not yet had an individual meeting with 56,000 claimants that they represent and more that are coming on board. And, again, we'll continue to update that, Your Honor. But we wanted to live up to the promise that we made last week that we would be filing that in, quote, the coming days. So we did.

I don't know that there are many other 2019s on file in the case, but we hope that that's helpful to the Court. We realize that Paul Hastings is a newcomer to the situation. We wanted to make sure that that information was out.

So, yes, the identifying information that's in the voluminous 2019 that was filed which took an awfully long time to get filed and to get prepared includes first name, last initial, blanks out the address, et cetera. It's very similar to the schedules that Your Honor will have seen in connection with the other 2019s that were filed in the last case. We candidly looked at those in order to obtain some guidance on

that.

So we believe that at least on the complaint that we don't have a 2019 on file and on the anticipated complaint that if we do file a 2019, it will be non-compliant, that we have done our best to comply with the rule and that it's a living document. It will continue to be updated.

THE COURT: Thank you.

MR. HANSEN: With respect to the other objections which really return to this question of is a committee of lawyers representing claimants a cognizable party in interest in the case under 1109 or Rule 24(a) or (b). We submit, Your Honor, the answer is unequivocally yes. These are the law firms that signed the plan support agreements that are at the core of this case. They are -- those plan support agreements really drive the plan process that is at the core of this case.

And as we said last week, Your Honor, and Mr. Molton said it too and I'm glad the the Third Circuit recognized it, this is the courtroom in which the plan process should play out and in which the motion to dismiss should play out, not some other courtroom.

(Sneeze)

THE COURT: Bless you.

MR. HANSEN: You're the trier of fact in the first instance, so to speak, with all of those issues, Judge. And the lawyers who signed the PSAs on behalf of themselves and now

they're working out with respect to all their claimants and the broad authority that exists under their letters, and we do expect each of those claimants to vote with respect to the plan when it's solicited. This is not -- we don't believe this should be a lawyers' vote. We should leave this as a claimant vote.

So from our perspective, they're unquestionably a party in interest. They absolutely are. They're driving this case from behind the scenes from a negotiating standpoint with the debtors and they've brought it here before Your Honor. So 1109 is meant to be flexible. It's meant to recognize the rights of multiple parties. We appreciate that Your Honor recognized our rights in the context of mediation, as well.

And when you look at the rules of either -- from an mandatory perspective or a permissive perspective that sit behind 1109, our view is we satisfy those, as well. One of the big objections that's been raised is that we are superfluous. We signed a PSA, so we should go sit in the corner and since the debtor's carrying the ball, we have no further interest in this case. And we can't even negotiation on supplemental plans or changes, whatever it might be.

Nothing's further from the truth, Your Honor. The law firms that are a part of the Ad Hoc Committee continue to work in this case. There's a lot to work out in terms of the plan, the disclosure statement, the solicitation materials

going effective, what the trust distribution procedures look like, et cetera. There's an awful lot to do here. And in connection with all of the issues that are going to come before the Court, our Committee is really important. And we believe has the ability to bring a central voice.

We've said it's a majority of the claimants repeatedly. It's a little bit of I think we should all -- there's bickering back and forth on that. We'll let the facts bear that out as we move through solicitation with respect to the plan. But unquestionably, we believe that they are a party in interest.

And so we think we satisfy 1109, and we think we satisfy 24(a) and (b). So those are really the main objections which were can you recognize lawyers as a party in interest and, if you do, are we duplicative of everybody else's efforts. And I think the answers are yes and no unequivocally.

And then I also would just raise the point that I think that's prejudicial to the extent that if the Court were to exclude the Ad Hoc Committee of Supporting Counsel from participating in this process. We from an organizational perspective, we're not in existence when the injunctive hearing was held and when Your Honor's narrow ruling was granted.

Obviously, there was an objection to that, and now there's an effort to seek to have that ruling brought up to the Third Circuit. The TCC seems desperate to just put anything

they can in front of the Third Circuit in the hope that this case gets thrown out before due process can take its course regarding the plan and their motion to dismiss here.

Hopefully, the Third Circuit's message today is heard by everybody in the room, and we can proceed in front of Your Honor and stop trying to get out of this courtroom and get higher up. But when you come back to it from a prejudice perspective, if the Ad Hoc Committee of Supporting Counsel is excluded from participating in this process, we believe that's prejudicial to them and the 56,000 parties that they represent and more who are about to sign up.

We also don't see any prejudice whatsoever to any other party in this courtroom from allowing the Ad Hoc Committee of Supporting Counsel to participate in the process. So no need to go on on argument, Your Honor. You have our perspective. And, obviously, if you have more questions for me after the respondents come up, I'd be happy to answer them.

THE COURT: Thank you, Counsel.

Ms. Richenderfer?

MS. RICHENDERFER: Thank you, Your Honor.

Linda Richenderfer on behalf of the United States Trustee.

Your Honor, we have not filed any documents with respect to the request for intervention. I did though want to briefly address the 2019 issue. Counsel is correct, they did

file a 2019. And upon our request I believe right before we were walking up the steps, we did receive an unredacted copy of that.

But, Your Honor, I just wanted to point out a few things. One is that the United States Trustee appoints claimants to the TCC. We don't appoint law firms. And so it's striking to me that this group consistently calls itself the group of -- I'm not going to get the correct -- supporting counsel. And I just think that that's just something that we all need to bear in mind. We will be reviewing what they filed as part of their 2019.

I don't want our silence in this courtroom to be an indication that we think that they have met all the requirements of 2019 and that they have given us the same information as was given in LTL1. Counsel for the supporting group of -- Ad Hoc Committee of Supporting Counsel did not live through the first case as we did when he talks about due process, and we all know. We've spent a lot of time in front of Your Honor going through what we all believe was due process and that's why we got in front of the Third Circuit. That's part of the due process that we're all afforded.

So, Your Honor, I don't -- we have to look at the 2019. I don't know if -- I don't think I've ever heard of a supporting counsel forming an ad hoc committee. An d hoc committees usually come knocking at the door later on in the

case for a substantial contribution claim, which is another reason why 2019 filings and status as an ad hoc committee is of some great importance.

THE COURT: Well, let me ask you a question and it's more of in the nature of picking your brain.

MS. RICHENDERFER: Okay.

THE COURT: And I know you filed -- I do want to note I saw that you filed a motion directed at all committees --

MS. RICHENDERFER: Yes, Your Honor. Yes.

THE COURT: -- all potential groups --

MS. RICHENDERFER: Yes.

THE COURT: -- to satisfy 2019 -- to meet the 2019 requirements.

MS. RICHENDERFER: Yes, Your Ho nor.

THE COURT: We see in all of the various mass-tort cases, whether it be the Diocese case down in Camden or pharmaceutical cases, it becomes standard that the committees work through the attorneys, the tort claimants committees specifically.

In fact, I think when there was litigation or pleadings regarding compensation for committee members, much of the focus was on the fact that the actual claimants were not in a position physically to attend to travel, to participate and, therefore, it was logical to work through counsel.

Why doesn't that extent in all scenarios? I know we

have an ad hoc committee and mesothelioma claimants but, yet, the activity has been through counsel. It is counsel that retained appellate counsel. So it's a fine line, but I'm wondering if it's a meaningful distinction for representation purposes.

MS. RICHENDERFER: Your Honor, it's an extremely important meaningful distinction. When the motion was filed during LTL1, the United States Trustee's Office, we filed an objection, and we objected. And our objection was never withdrawn. It was mooted basically when the case was dismissed. And it was also mooted because there was an agreement that was made that I don't even know if it was debtors or LTL or J&J.

I'm not quite sure, Your Honor, but there was some agreement that was reached that certain costs were going to be paid to certain attorneys. And it was sort of all at the end of the case so I apologize, Your Honor. I don't have all the details fresh in my memory as to how that all worked out.

But we stood by our objection that those costs should not have been paid. And we also know, Your Honor, that we are talking about committee members who are participating, we have learned, in the process and who are very aware of the process. And by that, I mean the actual claimants themselves.

I hesitate because I know that one of these days I'm going to have to be asked, probably something's going to come

up about the TCC. But, Your Honor, we interviewed, we did a whole new interview process when the TCC was formed for this case. And I can tell you people that are very involved in the process are on that TCC. And by people, I mean claimants. They are on that Committee, and they are involved and they are participating.

And, Your Honor, I don't know if there's a lot of them on today's hearing because, quite frankly, as events go, it's probably all not that interesting to non-lawyers. But I do know that on many of our conferences, we have participation via Zoom from people who are absolutely on the Committee. And it is still the U.S. Trustee's position that the Bankruptcy Code does not permit for the expenses of a lawyer who happens to represent a member of the Committee to be reimbursed. And we stood by that objection.

And it's a very important distinction, Your Honor. That's the way that it is. And 2019 talks about ad hoc committees of claimants. I mean it would be -- otherwise, we open the door to all sorts of groups coming in pulling in a couple of parties that they say they represent and, yet, moving forward with the litigation.

What troubles me, Your Honor, is I don't understand it's not an ad hoc group of supporting claimants. I don't understand that.

THE COURT: So if the --

MS. RICHENDERFER: That's my concern.

THE COURT: And I'll be asking Mr. Molton or whoever's speaking on behalf of the TCC the same. If with each law firm that's a committee member, and I think there are -- with respect to the Ad Hoc --

MS. RICHENDERFER: Okay.

THE COURT: -- they have a representative client in name, it would be no different than the workings of a TCC because we don't have 55 -- you can't make 55,000 -- form a committee out of 55,000 that's workable whether they're working. And to be representative, they work through counsel.

Is that the fundamental difference that they haven't linked with a specific identified claimant?

MS. RICHENDERFER: Well, Your Honor, they did file as part of their redacted disclosures to the U.S. Trustee the list of names of people that they represent.

But let me use an example for Your Honor. The Arnold & Itkin firm, they have been represented by Ms. Laura Davis Jones in this courthouse. And she filed a 2019 statement. And it was filed on behalf of Arnold & Itkin. And she is representing the claimants represented by Arnold & Itkin. And so it really wasn't an ad hoc committee per se, but it was loosely combined group of people who had similar positions in the case. And she's not representing Arnold & Itkin. She's representing the Arnold & Itkin claimants.

The same thing happened with -- I'm going to get confused here now. I know there was another individual who was here often and argued in front of Your Honor. A very tall individual.

THE COURT: Oh, from California?

MS. RICHENDERFER: Yes, from California.

UNIDENTIFIED SPEAKER: Mr. Pfister.

UNIDENTIFIED SPEAKER: Rob Pfister.

THE COURT: Mr. Pfister.

MS. RICHENDERFER: Mr. Pfister.

THE COURT: Mr. Pfister.

MS. RICHENDERFER: And he was here on behalf of a plaintiffs' law firm. And he always represented that he was representing the so-and-so law firm appearing on behalf of their claimants. And so that's why I can't figure out here, Your Honor, why is it an ad hoc group of counsel, supporting counsel as opposed to an ad hoc group of claimants who are represented by the various participants.

So it puzzles us because in Imerys, I got several different groupings like that and, here, in the first case we had groupings like that. We had the Ad Hoc Group of Meso Claimants that are represented.

THE COURT: So it could be -- and I'm not trying to solve the problem. I'm just trying to get an understanding of where the distinctions are. So it could be an ad hoc group of

claimants appearing through counsel on the committee because now they --

MS. RICHENDERFER: It could be. But that's not what's being (indiscernible).

THE COURT: No, I understand. I'm just trying to see where the differences lie.

MS. RICHENDERFER: Right. Your Honor, we've been very confused they filed a 2019 and they're still calling themselves the Ad Hoc Committee of Supporting Counsel. And so our confusion continues.

THE COURT: Fair enough.

MS. RICHENDERFER: I don't understand why it's not the claimants, an ad hoc committee of claimants who support the plan because ultimately, it's the claimants who get to make the decision. And no one's saying they got to sign on the dotted line today because one of the things is, oh yeah, it was the term sheet and we don't even know where that is right now let alone a plan, a real fully-baked plan.

So I'm not saying that people have to be prepared to sign on the dotted line today. They can't. There's nothing to sign. But this has continued to baffle the office and we will be looking closely at the 2019 that they did file. We felt it necessary to file it because we think that sometimes everyone needs a deadline. And we have been hearing from a lot of different people including this Ad Hoc Group we're going to get

to it, we're going to get to it.

So we did this in the first case also, Your Honor, you may recall.

THE COURT: Yes.

MS. RICHENDERFER: Never really had to have a hearing on it because everybody got it done. And that's all we want. We just want it done so that there's a record and we'll proceed from there.

THE COURT: Fair enough. Thank you, Counsel.

Ms. Cyganowski or --

MS. CYGANOWSKI: Yes. Just for a moment, Your Honor.

Melanie Cyganowski, proposed counsel to the Committee.

For a very limited purpose, I know Ms. Beville is going to address the motion, but so that the record is clear because it's been stated in several times in different ways that our TCC members are not as active as they are. But so that the record is clear, they are on all of our meetings. They receive all of our correspondence. When there are votes taken, they are actively participating.

Do they have counsel? Yes. Do they have counsel assist them from time to time? Yes. But the Committee truly functions through our committee members.

THE COURT: Thank you. I appreciate that.

Counsel?

MS. BEVILLE: Good afternoon, Your Honor.

Sunni Beville from Brown Rudnick on behalf of the TCC.

Your Honor, I'll just cut straight to your question, and the question really is is an ad hoc committee or a committee of creditors, they're acting through their lawyers so what is the distinction between an ad hoc committee of law firms. It is a very meaningful distinction.

You'll see that Rule 2019 specifically describes groups of creditors acting in concert, not their law firms. It's creditors that are sharing a same purpose, the same goal. In Boy Scouts, I believe Judge Silverstein called it having the same agenda. There has been no evidence, Your Honor that the clients that the law firms represent share this agenda. There is no evidence that their clients are even aware that their law firms are participating as part of an ad hoc committee.

I will just turn Your Honor to the Boy Scouts case before Judge Silverstein. In that case, Your Honor, there was an ad hoc committee participating in the case and seeking the Court's authority to be heard to participate in a plan process to be a mediation party. And there were a number of objections raised on a similar basis that law firms are not the appropriate parties. Law firms don't have claims. Law firms don't have a stake in the outcome of litigation.

And Judge Silverstein agreed. And so it was

important and there was extensive hearings and a bench ruling and an opinion that law firms are not the appropriate party in interest. Law firms don't have standing. For an ad hoc committee to exist, it has to exist through its clients, through members.

And in that case, Your Honor, in Boy Scouts, what Judge Silverstein required was for this ad hoc committee to reach out to the various claimants of the law firms and get their consent to act as a committee on their behalf.

THE COURT: To reach out to the underlying claimants.

MS. BEVILLE: Yes. So in that case, Your Honor, yes, letters were sent out to tens of thousands of sexual abuse victims. And, yes, Your Honor, they asked those sexual abuse victims to consent to being represented as an ad hoc committee to have their collective interests represented by the group, not their individual interest, their collective interest.

And they had to acknowledge, A, that they gave authority to their law firm to represent them in participating in the ad hoc committee, they had to acknowledge how the fees and costs of the ad hoc committee were being born; were those fees being passed on to the claims and, if not, they needed to understand what that fee arrangement was. That was part of the affirmative consent required.

And, Your Honor, Judge Silverstein did not permit that group to espouse that they represented tens of thousands

of claimants. They were only allowed to espouse that they were representative of the number of claimants who responded with affirmative consents. So while the law firms may have represented tens of thousands of sexual abuse victims, 18,000 responded in the affirmative. So it was an ad hoc committee that represented the interest of those 18,000 claimants.

Here, Your Honor, it's very important to draw that distinction. There has been a lot said in the various hearings, the various briefing there's support, 60,000 claimants support or 75,000 claimants. There's no evidence that those claimants support the plan. There's evidence that the law firms support a plan, but that's not the equivalent to claimant support.

And so it's important to recognize that Rule 24 of Civil Procedure requires for intervention, for participation that the party have a legally protected interest in the proceeding. It's not the law firms that have that interest, Your Honor. It's the clients that have that interest. And it is simply enough for this to be an ad hoc committee of supporting claimants, but that is not the path that these law firms chose but it's not a supportable path, Your Honor.

It's important that there's other ad hoc committees in Boy Scouts. It was an ad hoc committee of abuse survivors. When they originally participated in the case, Your Honor, they touted themselves as an ad hoc committee of supporting talc

claimants. But that changed to ad hoc committee of supporting counsel. Those terms are not interchangeable, Your Honor. Those terms do have a meaningful distinction, and it's important for that to be recognized.

THE COURT: Thank you.

MS. BEVILLE: One of the points I'd like to just point your Court to is after reviewing the Ad Hoc's motion reviewing the cases that were cited, there are no cases that stand for the proposition that a group of law firms can participate in the case.

The cases that were cited point to standing of official committees as that is an express party in interest under Section 1109 of the Bankruptcy Code. It talks about standing of court-appointed legal representatives, for example, the FCR in this case as they are standing for future claimants that don't have a voice absent that representative. But there's no case law, Your Honor, at least that I could find that stands for the proposition that law firms acting on behalf of law firms have standing.

When we all come to the podium, Your Honor, we talk about -- we represent we're part of this law firm acting on behalf of and we name a client or a client group. That's not what's being done here with this Ad Hoc Committee of Supporting Counsel. Paul Hastings stands here on behalf of a group of law firms. That's not appropriate.

The case law under Rule 24 and Section 1109 talks about a legally protected interest. It's not an interest in the case outcome. That's not sufficient. The interest must be concrete, it must be more than generalized, and it must be more than a general economic interest in the outcome of the case. And, Your Honor, all of those cases that have those standings were adopted in Third Circuit and have even been cited in bankruptcy courts here in New Jersey.

Your Honor, I'll note that the Ad Hoc Committee did file a 2019 statement. It did check the boxes as far as the law firms acknowledging that they're acting as part of a group. It did not check the boxes that the creditors have acknowledged they're acting as part of a group. There's no statement, no evidence that any of their clients are aware that they're part of the Ad Hoc, that they're aware of the positions of the Ad Hoc Committee.

Are their clients even aware of the terms of the term sheet? And are the clients aware that they are being held out as supporting the terms of the plan term sheet? There is no evidence of that, Your Honor.

THE COURT: But I don't need evidence of that at this juncture. I mean that is an important issue down the road. The issue you would agree is whether or not they're aware that they are being represented in this case as a group.

MS. BEVILLE: That they're aware they're being

represented in the case as a group and that the law firms are acting on their collective interest?

THE COURT: Yes.

MS. BEVILLE: And the law firms as a group stated collective interest is to support the debtor's plan. That is not a defensible legally protected interest for intervention purposes. And if the clients are not aware that their names are being used to support that collective interest, then I don't think it is proper, Your Honor.

So if I am a client in this case, I sign an engagement letter with a firm, I want them to represent me. But if they're now saying that Sunni Beville supports a debtor plan that I've never seen before, I may not consent to that. And as a client, as a claimant, I have a right to consent to my participation in an ad hoc group.

And that was the finding by Judge Silverstein in Boy Scouts, Your Honor, was that it had to be an ad hoc committee of creditors and those creditors had to consent to their participation in the group. And we don't have that here, Your Honor.

And we were talking about Rule 2019. I would submit, Your Honor, that simply because it was filed doesn't mean that Rule 2109 was complied with. In the Boy Scouts case, Your Honor, they had to include a list of the claimants, the cancer type.

In Imerys, that was required. But it was more than that, Your Honor. They required a showing, they required copies of the affirmative consents. And that was not done here, and I will argue that that is actually fatal to the Ad Hoc Committee's participation in the case where they can't show that their individual law firm clients have consented to participation.

And I'll note, and I know that the Ad Hoc Committee counsel included in their letter to the Court a brief that was filed in Boy Scouts. But that is not the full story, Your Honor. And the 2019 is not a technical requirement. And as Judge Silverstein stated, the ad hoc committee law firms themselves don't have standing. It's their clients that have standing.

And when we start to talk about the clients of these law firms, I'm going to leave to Mr. Birchfield from Beasley Allen to address the claimant interest themselves. But here, Your Honor, the Ad Hoc Committee indicates that its stated interest is to support the debtor. And in the same pleading, Your Honor, it indicates that the debtor's primarily goal in this case is to resolve its talc liability while paying as little as possible.

That's the stated purpose of the Ad Hoc Committee is to support the debtor in that endeavor. I'm not sure that any of the claimants have consented to that representation.

And, Your Honor, I'll just make a final note. The debtor and the Ad Hoc Committee are conflating representation of the law firms with representation of claimants. We've heard the debtors state time and time again they have the support of a majority of claimants. That hasn't been proven. And we are not even aware if any claimants are aware of the terms of their proposed plan.

The Ad Hoc Committee identifies itself first as supporting talc claimants, and then they change that to supporting counsel. Again, Your Honor, they're not interchangeable. Their interests are not synonymous.

I know that you'll hear a lot of passion from the parties at the podium, Your Honor. And you'll hear from the law firm members of the Ad Hoc counsel's desire to express support for case outcome. But those desires and passion for this case cannot displace the rules of the Court, the restrictions of the Bankruptcy Code, and the applicability of the bankruptcy rules.

The rules matter here, Your Honor. The Ad Hoc Committee submitted a brief to the Third Circuit without leave of the Third Circuit, without leave of this Court to do so. It's important for Your Honor to assess whether or not the Ad Hoc Committee of Law firms has requisite standing. We argue they do not.

If you find that they are acting on behalf of their

claimants, then before they are permitted to intervene, they have to get consent of their claimants to take the positions that they're taking and have the claimants be a part of the process, be part of the decision making, and sign on to the positions that are being taken.

Ms. Cyganowski was absolutely correct. The TCC is often used as an example of a minority of claimants. We are a fiduciary, Your Honor, for all talc claimants. We are a committee comprised of members that participate and input all of the decision-making of the Committee. And the point, Your Honor, here is the other claimants should be afforded the same opportunity. Thank you.

THE COURT: Thank you, Counsel.

MS. BEVILLE: One other note, Your Honor, just on the Rule 2019, it has been filed but it was filed in redacted process. I know counsel indicated he would work with the parties, but the TCC does request an unredacted copy. Thank you.

THE COURT: That's fine. Thank you.

Mr. Birchfield, you've been trying. Come on up.

MR. BIRCHFIELD: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Andy Birchfield, Beasley Allen, on behalf of Alishia Landrum. And my purpose is to address the narrative of the Ad Hoc Committee of Counsel, the narrative that is the foundation

of its motion to intervene. That narrative is that the Ad Hoc Committee of Law Firms represent a vast majority of talc claimants, and it seeks to intervene in order to serve as a counterweight to the loud minority of the TCC and to maximize the Ad Hoc Committee's constituents' recovery by supporting the debtor's plan of reorganization.

This narrative raises two important and troubling questions. The first question is if this group represents the majority of talc claimants, what is the definition of talc claimants that's being used. And the second question is according to the terms of the agreement that this group contends maximizes recovery, what would the talc claimants receive.

So for the first question, what is the definition of talc claimants, one definition, the definition that is used and has been used by the TCC and its members is based on the evidence and the science that has been guided by years of litigation; years of litigation in state courts, litigation in federal court here, the MDL court, that has been guided through an extensive Daubert process hearings, experts, and a Daubert decision by Judge Wolfson.

That is the basis of the definition of talc claims that focuses on the types of injuries that are supported both by the evidence and the science. Those injuries are epithelial ovarian cancer with specific subtypes and mesothelioma.

This Court in appointing in its order appointing Mr. Ken Feinberg as a Rule 706 expert followed this definition without objection from LTL. The Court ordered Mr. Feinberg to estimate the value and the volume of ovarian cancer claims and mesothelioma claims, not uterine cancer claims or vaginal cancer claims or cervical cancer claims. Not the whole host of additional claims that would be covered under this new definition of gynecological cancers.

This new and expensive definition that is outlined in the debtor's plan, the plan support agreement, and that the members of the Ad Hoc Committee are -- they're contractually bound to accept this definition. This would be counter to the definition that was employed in LTL1. It would be counter to what the Court ordered Mr. Feinberg to investigate and to estimate.

Your Honor, for years, leadership law firms, law firms that have been litigating in state courts, the MDL leadership that has operated here in this courthouse, they have been guided by what the evidence and the science supports and they have been advising, they have been counseling law firms across the country about what types of claims are supported. And law firms have -- many law firms have followed that guidance.

If the debtor and the Ad Hoc Committee of Supporting Counsel, if their agreement were implemented, if their

agreement were implemented and this new definition were applied, a definition that is untethered, untethered to support from the evidence and the science, the floodgates would be flung open wide.

If the floodgates are opened, then who could say what the denominator would be, who could say what it would require to have a majority, much less a super majority? The overly broad definition is an effort to distort the voting power, the voting power of the real victims here. So the first question, what is the definition that's being used, that's a troubling question.

The second question is what has the Ad Hoc Committee law firms agreed to? What are the terms that they have agreed to that purportedly maximizes value for its constituents? Your Honor, if we could take -- I want to take just a quick look for just a moment --

THE COURT: Sure.

MR. BIRCHFIELD: -- at the plan support agreement.

THE COURT: But I have a question for you --

MR. BIRCHFIELD: Yes, sir.

THE COURT: -- while you pull it up. So what do you -- what role do you see for claimants who are victims of -- alleged victims of other types of cancer that they ascribe to talc in this case? Are they claimants?

MR. BIRCHFIELD: Your Honor, I would say that they

would not be claimants. The tort system, the civil justice system has mechanisms for addressing that. I mean if we --

THE COURT: But under the very broadest definition under the Bankruptcy Code, it would be a claim, so -- and I'm asking this because we haven't discussed this --

MR. BIRCHFIELD: Right.

THE COURT: -- in detail.

MR. BIRCHFIELD: And it would be a very difficult question to grapple with if we were dealing with a debtor in financial distress. Here we have a debtor that could choose, and I would urge they do pay. If they want to pay all of the claims that the Ad Hoc Committee represents, J&J can do that. J&J is not a debtor. J&J can agree to enter into settlement agreements with the Ad Hoc Committees on the terms that they have here.

But if you were dealing with -- to address your question, if you were dealing with a debtor that was in financial distress, then you would have to weigh, I believe the Court would have to weigh what are the claims that are supported by the evidence and the science and the ones that are not. You would have to vet those.

THE COURT: I guess --

MR. BIRCHFIELD: And the tort system has done that.

THE COURT: One would think that the plan could address that just by ascribing a different value or potential

compensation scheme for -- depending upon the injury and the nature of the cancer.

MR. BIRCHFIELD: Your Honor, not with what's been proposed here. Not what's been put forward by the Ad Hoc Committee. Then it would come -- it comes back to the foundational question of whether there is jurisdiction here, whether there's financial distress or not.

Theoretically, Your Honor, if you were dealing with a company in financial distress, I'm not trying to avoid the issue.

THE COURT: No, I understand.

MR. BIRCHFIELD: There would be ways that that could be addressed. It would be addressed by following what has been -- what has played out in the tort system over the following years.

THE COURT: Just one second. Mr. Gordon?

MR. GORDON: I'm sorry to interrupt. I need to interpose an objection. He's about to put up on the screen because we just saw it the exhibit to the term sheet that we maintain is confidential. It's subject to confidentiality. The issue of its confidentiality is set for hearing on May 16th, and we object to this being shown publicly.

MR. BIRCHFIELD: Your Honor, I did not intend. I did not intend. I had two slides in here. The only slides that I have are from the plan support agreement that are not

confidential.

I had two slides here that are based on the term sheet that would show what the claimants would receive. It is confidential. I thought that it was going to be addressed here. I hid the slides, as Mr. Gordon can see. Those slides that pertain to the term sheet are hidden. I had no intention of displaying those.

I would like to address --

MR. GORDON: It did just come up on the screen. It's right there.

MR. BIRCHFIELD: That's the plan. The only ones that I have.

THE COURT: Nothing's up on the -- at least nothing's up on the screen yet that I haven't seen.

MR. GORDON: Well, it was up.

THE COURT: Oh, okay.

MR. GORDON: Because what's going to happen here, they've already advanced the argument that they're just going to put it in publicly and then contend that we can't argue its confidentiality, and we have a I think a text order from Your Honor setting the hearing on that very issue for the 16th, and I would ask that the confidentiality not be breached today.

I would also object on the basis this is far beyond information needed to assess whether or not an ad hoc committee should intervene. This is getting into plan issues and

solicitation issues and the like. It's not relevant.

MR. BIRCHFIELD: Well, what the plan support agreement shows, it is a contract that binds the ad hoc committees to the terms of the plan support agreement which includes the term sheet, which includes the grid that shows the values that the claimants would receive. That is an important part of the narrative here. And that is an important part of our position that the motion should be denied.

THE COURT: Go ahead and argue it. I don't have to read the language. Argue the position.

MR. BIRCHFIELD: All right. So, Your Honor, the plan support agreement says --

THE COURT: Of course, don't read the slide into the record. Okay?

(Laughter)

MR. BIRCHFIELD: Okay. All right.

The plan support agreement is not contested as being confidential. That's not. The exhibit to the term sheet is what is argued as being confidential. But the plan support agreement says that all present and future talc claims, personal injury, governmental entity claims, all talc claims against all debtor-related parties for a total contribution from the debtor not to exceed the present value of $8.9 billion.

According to that plan support agreement, the members

of the Ad Hoc Committee, the signators on that agreement, they agree to oppose any objection to the debtor's efforts to confirm the Chapter 11 plan, to oppose any other restructuring proposal or plan of reorganization. So if there were a proposal that evolved through this process or another plan that was put forward that would be better for talc claimants, the Ad Hoc Committee members are contractually bound to oppose that proposal.

They're contractually bound to not seek to materially amend the -- or modify the Chapter 11 plan or any related documents. That's the term sheet, not to file any pleading materially inconsistent, not to object or to delay or impede or take any other action to interfere with the confirmation of the Chapter 11 plan.

Your Honor, what I think is vitally important here to address, what would the claimants receive. What would the claimants receive under the terms of the agreement? There is a grid, and we argue that it should not be confidential. They've doubled down on their position today that that is the heart of their proposal. That is the heart of this proceeding that these firms are bound to this term sheet and they say that it is, that the support is growing. What would the claimants get?

And, Your Honor, I would ask the permission to walk through just a couple of examples of what the claimants would get.

THE COURT: No, I'm going to pass on that, because I understand the point you're making.

MR. BIRCHFIELD: Your Honor, the lawyers that comprise the Ad Hoc group, they're good lawyers. If they and their clients choose to accept, if they choose to accept such discounted values and they are, I mean I know I can't talk about it, but they're bound. They're in the agreement. They are steeply, steeply discounted values.

If they choose to do that in exchange for quickpay, I respect that decision. But they should not be able to foist that position on the majority of claimants, the majority of claimants if the definition is an appropriate definition of talc claims -- epithelial ovarian cancer claims and mesothelioma claims -- then they do not represent the majority of those claims.

If J&J wants to settle with them, they can do that. I would urge them to do that today. Based on the terms that they have in the term sheet, they can do that outside of bankruptcy. Just don't attempt, don't attempt to force these values on the majority of talc claims that are supported by the evidence and the science.

The TCC urges the Court to -- continue to urge the Court to dismiss this as a bad-faith filing. But for consideration of the motion that all further proceedings, the Ad Hoc Committee by contract is an alter ego of LTL. And

allowing them to be a party in these proceedings just gives LTL a second seat at the table, and that's inappropriate and we urge you to deny the motion, Your Honor.

THE COURT: Thank you.

MR. BIRCHFIELD: Thank you.

THE COURT: Ms. Beville?

MS. BEVILLE: Your Honor, if I may, I just want to address the question that you asked about whether claimants with different types of cancer that have been litigated already, would they have a claim in the bankruptcy. I think, Your Honor, you're right they would have a right to file a claim. Claims are broadly defined and can include any potential right to payment.

But you put your finger on the very issue, Your Honor, is those claims may not be compensable either under the plan or under trust distribution procedures. If we got to a point where we were actually voting on a plan, they may be either separately classified or allowed for zero dollars for voting purposes. There's a lot of ways that those claims could be treated.

One of the concerns we have is this conflation of all claims being put in one pot and potentially sharing a pot of money pro rata not depending on the legitimacy of the claims that are being reported. So you may have a claim, but it may not be a compensable claim.

THE COURT: All right. Thank you.

Mr. Thompson?

MR. THOMPSON: Thank you. Your Honor, I'll be brief. I've tried to limit what I was going to say based on what's already been said.

In response to your question, who decides what a valid claim is, that's a great question and it's one that respectfully you don't have subject matter jurisdiction to decide because this is a bad-faith bankruptcy. And so what we see here are claims, what LTL has done is they've broadened the creditor class beyond what was being litigated in the tort system. They've broadened it to include claims that are not supported, that did not clear the Daubert challenges just to get the votes.

They're doing all this just to get the votes. They're creating creditors that they don't have to pay anything to out of bankruptcy. Tens of thousands of these gynecological cancers that don't have a scientific connection to talc, they are willing to pay those people who are owed -- if they exist, that are owed nothing in the tort system. The gate is the -- the challenge is to enter -- who decides what is a good case, well, the tort system does and that limits the types of claims that are filed.

I have a large firm. We are retained by about 350 mesothelioma victims a year. We only sued J&J probably 35 to

40 of those cases. Why? Because most of them weren't very good J&J cases. They had a lot of other exposure to other stuff. The tort system determines what valid claims are. And, obviously, J&J is desperate to not have that Exhibit A out there because if the public saw Exhibit A, they'd see how terrible their plan is and that's why they got to keep it a secret.

And so this is all just an effort to base subject matter jurisdiction on votes. And it's not even claimants before you, it's lawyers saying -- so one thing that's very clear is that the supporting counsel want to get paid. That much is obvious. I think that's very clear. And that's not a basis for subject matter jurisdiction. The whole point of Judge Ambro's ruling was you can't infringe on my clients' pre-bankruptcy remedies to the tort system if you file in bad faith, which J&J has done again after giving away billions of dollars in a fraudulent transfer.

The other thing is there's a conflict for the firms that are supporting this deal because they're saying we represent ovarian cancer victims and we represent mesothelioma victims, but we also represent these gynecological victims. And they've created an artificial limited fund where the supporting counsel have a conflict between representing their own clients. Because the mesothelioma and epithelial ovarian cancer claims, if the supporting counsel actually have them, I

would request the unredacted version of the 2019 verified statement as well for my law firm.

I'm not ashamed of the answer when someone asks me if I have medical records because I do. I have medical records for all my clients. When we asked Mr. Pulaski at Page 19 of his deposition, he claims to have 6,000 clients. It's very clear he wants to be paid for them. But what he's not willing to do is share the medical information.

Question, Page 19 of his deposition,

"Q Does your firm have medical records with respect to all 6,000 of your clients?

Privileged is the objection that's given by his lawyer. He refuses to answer. And so I think what we're talking about here today is gate, right. So you have a gate to decide who votes. You have a gate to decide whether a debtor that files in bad faith can come into the bankruptcy system, and they can't. And I think everything else -- last thing.

They've already agreed to be bound by the deal. So they come in later and say, no, this is going to be negotiated. No, they're bound by the deal. They have agreed to bind their clients that they're adding numbers to, so this limited fund of 8.9 billion, they're just adding claimants to reduce what's available for everybody else. Thank you.

THE COURT: All right. Mr. Thompson, just don't go for a second. Thank you.

MR. THOMPSON: You've never asked me to come back.

THE COURT: I know. It's troubling for me, as well.

(Laughter)

THE COURT: But I'm going to give you another -- a small homework assignment. I didn't want to interrupt. But I've heard reference to this Court lacking subject matter jurisdiction. And it struck me as a question that the Supreme Court recently touched on. In fact, they touched on it this past April subsequent to Judge Ambro's decision because I know he used -- he referenced subject matter jurisdiction.

It's the MOAC Mall Holdings case, S.Ct. April 19, 2023. And before the Supreme Court, and I'm not going to go into it. This isn't classroom. But it was an analysis of whether 363(m) is jurisdictional or not. And the Supreme Court took the time to say we need to address subject matter jurisdiction because there's a misconception about it and how it applies in bankruptcy.

And they made the point, and I'm going to read if I can, "The court" -- I'm sorry, bear with me.

"This court has clarified that the jurisdictional label bears on the power of the court rather than on the rights of the obligations of the parties. The court will only treat a provision as jurisdictional if Congress clearly states as much."

And it goes down further.

"This clear statement rule does not require Congress to use magical words. But Congress' statement must be clear and not merely plausible or better than non-jurisdictional alternatives."

I think there's another quote.

"Statutory context further clenches the case. In that case, 363(m) is separated from the Code provisions that recognize federal courts' jurisdiction over bankruptcy matter, which is 28 U.S.C. Section 1334(a) through (b) and (e). And unlike other Code provisions, Section 363(m) contains no clear tie to the Code's plainly jurisdictional provisions."

What I'm going to ask because we can all form different opinions, I read this and it says look at Section 1112(b), are there any jurisdictional -- is there any clear evidence or demonstration that Congress intended in Section 1112(b) to refer or speak to subject matter jurisdiction. I guess it doesn't because I cannot act on the requirements of 1112(b) which is maybe to dismiss a case for cause.

And, indeed, even if there's cause, Section 1112(b) allows the Court in certain circumstances to continue the case, not to either dismiss it or convert it. The Court must have subject matter jurisdiction.

So what I'm saying is I'm not sure the issue that,

and it's raised so often, is one of subject matter jurisdiction. It may be -- and ultimately it is whether or not there's cause to dismiss this case.

MR. THOMPSON: Right.

THE COURT: But I don't know if you could say I can't act on that or act in any way, whether it be appointing an FCR or appointing an ad hoc because of subject matter jurisdiction because I don't believe 1112 speaks to subject matter jurisdiction at all. It's found in 28 U.S.C. 1334.

So that's my view now. I'm more than happy to have others brief it if they wish or raise it in further pleadings or tell me I'm wrong. It won't be the first time.

MR. THOMPSON: So I appreciate that, Your Honor. And I would say I'll look into that, obviously, and I appreciate the homework assignment. And I think what I'm saying is subject matter jurisdiction is, is that this is a bad-faith bankruptcy in which they should be denied entry.

Now you've got to have a -- you're going to hear argument about that in a couple of weeks. You're going to make a ruling on that. I'm saying that just in a broad sense that as we're talking about votes, because that's really the argument they're making. They're claiming that you have subject matter jurisdiction, this is a good-faith bankruptcy because they have enough votes. I think that's what they're saying.

And they moved all the papers around and did a fraudulent transfer so now they're in distress. But they're really basing this on we got all these votes. But the lawyers are the ones before you. The reason it is not the clients is because the lawyers themselves have conflicted themselves by signing agreements that preclude them from supporting any plan. This is the risk when you asked me to come back up, Judge. I was going to leave, but this is the problem.

THE COURT: I know. I get the good with the bad.

MR. THOMPSON: By signing agreements that preclude them from supporting any plan other than the debtors. So if there's a plan offered by a party other than the debtor that is actually better for their clients, the PSA specifically prevent these lawyers from supporting it. This is a conflict.

So the voice in support of the plan is the debtors. The supporting counsel have tied themselves to the debtor. They both want the same thing. They both want a channeling injunction. The conditions of the term sheet are a preliminary injunction, a permanent injunction, and the FCR giving a third of the trust to future victims. How does that work? How does an FCR who is an elected representative of the victims make a necessary condition that she gives one third to everybody that's ever going to get sick for any cancer alleged from talc?

This is a problem caused completely by J&J. All of this mess in here about who's a claimant, who's not is J&J's

fault. If we were in the tort system, it would be very clear and it was very clear. The tort system's working. Valid claims are being settled. Invalid claims were not being filed because they were too difficult. They wouldn't sue if you didn't think you could win. Thank you, Your Honor.

THE COURT: You're welcome. Thank you, Mr. Thompson.

Counsel, did you want to respond?

We've gone afield a bit.

MR. HANSEN: Just a bit, Your Honor.

I'm going to try to stay to the narrow issue of our intervention with respect to the preliminary injunction section proceeding. I realize that things have gone further afield.

But where I wanted to focus back, Your Honor, is we've heard an awful lot here. I think I have to address some of the speculation which is all it is. We stand before you today -- Paul Hastings, Cole Schotz, and Parkins & Rubio -- representing an ad hoc group of supporting counsel. Those counsel have engagement letters with their claimant clients. Those claimant clients are again approximately 56,000 members which we filed last night.

We've got everybody saying you can't let us in because we have --

(Music playing from gallery)

MR. HANSEN: I should have had that play when I came up, Your Honor. Intro music is always great. That's a --

THE COURT: It's not my phone.

MR. HANSEN: The basic argument here is you can't be here because you don't represent the actual claimants. So, again, the clients that we have right now at the law firm level, they represent the claimants. We filed a consolidated 2019 which is what we told you we would do last week to try to ease the burden on everybody. And what we have is individual law firms with their clients, with their engagement letters, and then our engagement letters on top of those. So you have effectively a structure in that 2019.

There's been tons of speculation around, well, I understand those are the lawyers that signed the PSA. I understand that they speak on behalf of their clients, but we don't think they speak on behalf of their clients, the law firm members. Your Honor, it's simply untrue. The fact that it's a speculative comment. There's no evidence with respect to that.

The question of intervention when we go back to -- and, by the way, like the accusation that these law firms don't keep their clients apprised, it's simply not true. They do keep their clients apprised. In the 2019, we haven't filed any emails or other types of evidence that says, yes, I gave them specific notice of serving in connection with this ad hoc committee for this purpose, for this purpose of entry into a motion to intervene regarding the preliminary injunction proceeding. But I don't think you need that.

Your Honor, it's a good-faith attempt on behalf of the law firms to demonstrate to you who the claimants are, who the law firms that represent them are, and who we as the consolidated counsel for that entire group represent.

THE COURT: When you say the group, is it the group of law firms or is it the group of claimants or both? It's an ad hoc group of whom?

MR. HANSEN: Right now, Your Honor, for Paul Hastings, for Cole Schotz, and for Parkins & Rubio, it's an ad hoc group of the supporting counsel who represent those claimants. And what we would say is those claimants have the authority -- I'm sorry, those law firms have the authority in their engagement letters to act on behalf of their claimant clients. So we are helping them in that job.

If the Court says we'd like you to organize and bring a claimant from each, we're not going to bring 56,000 claimants and form an ad hoc committee of them. It would be pretty impossible to host those phone calls. It would be hard to get -- have any type of, like, interactive communication.

And, obviously, form the TCC's perspective, you heard the U.S. Trustee say we appoint a claimant, that claimant designates a lawyer, that lawyer sits on the committee with their claimant, and they have meetings and they discuss. The lawyers that sit on that committee also represent other claimants. That's not the only claimant they represent. And,

obviously, they're acting on behalf of lots of other claimants, and we've heard many times from TCC counsel that they represent the interest of everyone. But as a fiduciary, which they do as an official committee, they aren't listening to us at all on that front or our clients on that front.

But the members law firms that serve by designation on that creditors' committee, probably pursuant to their bylaws, represent other parties, too. I don't know whether they have authority from those other clients to serve on the committee on behalf of one client in opposing a deal that's come in.

At the end of the day with respect to the claimants, they're going to vote on a plan. That's what they vote on, and that's what should be put to them. And their votes will come in, and we'll see whether or not it meets the threshold under the Bankruptcy Code. But Your Honor asked me a direct question.

THE COURT: Yeah.

MR. HANSEN: Today standing here, we represent the law firms who have authority to speak on behalf of their clients.

THE COURT: And that authority is found in the retention agreements between the law firms and their clients?

MR. HANSEN: That's right, Your Honor.

THE COURT: And those are attached to the 2019?

MR. HANSEN: That's right, Your Honor.

THE COURT: So it's your position that you don't need specific authorization to represent them in this bankruptcy?

MR. HANSEN: Well, Your Honor, yeah, our --

THE COURT: Not you, that the law firms don't need specific as you just detailed consent or authorization to represent their interest in opposing this or in supporting the debtor's plan?

MR. HANSEN: Well, they have it, Your Honor. I mean, again, the law firms are communicating with their clients, right. So, obviously, those are privileged communications, but they're communicating with their clients. And then they're telling us we would like you to represent us and on behalf of us our clients in connection with this proceeding.

I feel like we've elevated so much form over substance and that what's happening here -- and, again, just to go to Boy Scouts for a second, as I understand it, I was not involved in the case. But as I understand it, the Brown Rudnick firm started out representing law firms. And Judge Silverstein asked them over time to get engagement letters or consents, if you will, from individual claimants, which they went ahead and did. And I believe they participated in the case as they went ahead and did that.

I mean if Your Honor takes that approach, we'll deal with it. We would hope that you would find it to be

unnecessary and that we can advance this case to the vote which matters. And in the meantime, like in many cases, even if Paul Hastings, Cole Schotz, and Parkins & Rubio were not here, the individual law firms on behalf of their clients would still have to file a 2019. The lawyers would have to stand in front of you and make arguments.

So we are basically facilitating the voices of 56,000-plus claimants to come before the Court through their law firms, and we are speaking on their behalf. They're also not bankruptcy lawyers, right. They're lawyers in the tort system. And so we are here assisting them from a bankruptcy perspective here in this Court.

So I do think it's a distinction without a difference for purposes of intervention in this motion. We've also had a lot of arguments in here. At this point, I think people are trying to object to our participation in anything in the case. I completely disagree with that approach. And everyone seems to be pointing a finger at the plan support agreement as if it's a horrible contract, something that binds us and eliminates any type of latitude.

As we pointed out for the Court before, that's an agreement that this case rides in the back of, but there's an awful lot of negotiation that goes forward. And as Your Honor is aware, those processes, right, most large cases get solved through the plan support agreement process or the mediation

process, candidly, with parties breaking out on both sides and hopefully coming together. That's what we hope to happen here. So that's not another -- that's not a reason to deny us standing in connection with the motion to intervene.

Your Honor, a couple of other points. There's been a lot said about how we represent ad claims, fake claims. This was all over the TCC's pleadings. What's happening is we're stuffing the ballot box with fake claims. That's -- there's no truth to that statement. There's no basis for that statement. And to come up here for everyone to say to you, Your Honor, again that the definition of claim shouldn't be what the Bankruptcy Code says the definition of claim is and you should have to go resort to some other definition of claim is inappropriate, number one.

Number two, it's inappropriate to make those kinds of statements without anything to back them up. And, candidly, Your Honor, as I think we mentioned at the last hearing, a few of the members of the Ad Hoc Committee that we represent sat on the TCC in the first case. They have now entered into plan support agreements. They're in the Ad Hoc Committee in this case. The claimants that they represented, they're all filed claims. So many of those 56,000 claims are actually filed. They have been on file, right, like actual lawsuits where they have been filed.

So, Your Honor, again, the PSA process, this case is

designed to facilitate a speedy recovery. It's designed ultimately to get money into the pockets of claimants as opposed to waiting out, you know, if you do the average with the number of claims that are here and the number of trials that are held each year and you go through the appellate process, I mean you could be talking hundreds of years before you ultimately arrive at justice if there isn't a settlement in the meantime.

And so, of course, bankruptcy, as you pointed out in the first case in denying the motion to dismiss, is designed to consolidate that. It's designed to speed the recoveries, and it's designed to present a fair process. So all of this talk when you get down to the narrow question about bad claims, first of all, those are false statements. And, second of all, they have no relevance with respect to the motion to intervene. And I didn't really want to get into that, but I just feel like so much has been said that we have to defend it on that basis.

So coming back to this narrow issue, Your Honor, again, I think it is elevating form over substance. I think when you look at the question of whether there is a concrete interest in the outcome here, absolutely, a concrete interest in the outcome. The lawyers on behalf of their clients, well, the lawyers signed PSAs. The votes will come in on the plan. Ultimately, it doesn't bind the claimants.

And do they have an interest in the outcome? They

do. It's a faster recovery. It's a faster process. They have an interest in not letting this case get dismissed. They have an interest in combating the efforts to drive it back out of bankruptcy. And they also have an interest in participating and trying to get to a solution with everyone. That's the part that I think gets lost here in the stark positions that are taken by the parties.

Bankruptcy is a consolidating event. People are supposed to come in and try to get to a deal because by getting to a deal, everybody gets better justice. That's where this is supposed to go and so we applaud the Court's appointment of the mediators. We appreciate the opportunity to participate in that and we hope all parties take that seriously and move towards that and allowing the Ad Hoc Committee to participate in the question of whether or not the appeal of the denial or the appeal of the grant of the motion for preliminary injunction should be put up to the Third Circuit.

I think it just demonstrates that we have an interest in the outcome of that proceeding, just like we have an interest in the outcome of everything else that's happening here. I'm happy to answer any other questions you have, Your Honor. There was a lot said. I could keep going, but I -- I guess the other thing I would point out, too, we didn't submit the Boy Scouts pleadings with respect to this motion. We gave those to Your Honor in a letter in connection with the

mediation process because the TCC opposed our participation in mediation on similar grounds.

So, again, we didn't put it in so that it could be dragged out publicly and talked about them being cynical and all the rest of that, but they were the ones who have brought it up and dove into it which is why I addressed it.

Do you have any other questions for me, Your Honor?

THE COURT: I don't at the moment. Thank you.

Ms. Richenderfer.

MR. HANSEN: Thank you, Your Honor.

MS. RICHENDERFER: Your Honor, Linda Richenderfer from the Office of the United States Trustee. I was just surprised to learn that something was submitted to Your Honor that we did not receive a copy of. So I would ask in the future the Ad Hoc Committee, in whatever form it is, also provide to the U.S. Trustee's Office anything that is submitted to the Court.

Your Honor, I've been back there learning an awful lot about the Boy Scouts case, and that includes the fact that Judge Silverstein ordered that notices go out to all of the claimants who were represented by the law firms who wanted to be part of the coalition. Ended up that not all of them submitted a letter in favor of the coalition and then the coalition put together a steering company. And why that's important, Your Honor, is that here we have Cole Schotz and

Paul Hastings, they owe a fiduciary duty to their clients.

Who was their client? Their client are law firms. The client is not claimants. The clients are law firms. Those law firms represent claimants. And I was surprised to hear Counsel say that the claimants support the plan because I sat through a lot of the depositions for the preliminary injunction. Mr. Watts (phonetic) was extremely clear. He hadn't talked to his clients yet about the PSA. There wasn't anything to talk to them about he said. This is just a term sheet.

Yeah, there still needs to be a plan to be developed. He says some of them may support it, some of them may not support it, but that was his response to the question of, are you binding your clients? And he was very clear. I'm not binding my clients. I think this is a good deal. I'm going to tell them I'm in favor of this deal, but I haven't even spoken to them about it yet. And that was what he testified to in connection with the preliminary injunction hearing.

My memory's not as good as to, I know there was at least one other counsel who was deposed, who had signed a PSA. And so, Your Honor, I'm not sure where the statement's coming from that all of the collective clients are on board because this group is -- it's gathered together under one concept, which is we support the plan. I don't know, again, I don't know what the plan is. I guess it's just the term sheet.

That's all they could be supporting right now, because we don't have a plan yet.

But we don't know whether or not these claimants do support even the term sheet because it hasn't gone down to that lower level. This has nothing to do with whether or not people who do support the term sheet and people who do support signing plan support agreements should or shouldn't be allowed to intervene. I'm not taking a position on that, Your Honor.

I just, unfortunately, we seem to have segued into the standing of this group, and I just wanted to make it clear on the record, Your Honor, that I need to investigate a little further into the Boy Scout situation as we may be raising questions ourselves. But I have to respectfully disagree with the concept that all of these claimants are on board. They may or may not have given authority to their attorneys to do certain things but to say that they individually are on board, I think is a mistake.

THE COURT: The Court doesn't accept -- the Court has no misconception that 55,000 claimants haven't expressed a willingness to adopt even the term sheet as it is.

MS. RICHENDERFER: Okay. Thank you, Your Honor. And that's what I wanted to clarify because when I heard that said, I was a little surprised because Mr. Watts was very open and frank and honest about that whole scenario.

Thank you, Your Honor.

THE COURT: Mr. --

MR. HANSEN: Your Honor, I didn't make the representation --

THE COURT: I understand.

MR. HANSEN: -- that 5,000 of them were authorizing their lawyer. I never made that representation. The lawyers are going to recommend it to them. They'll vote when the plan comes across to them. I just want to be clear on that.

THE COURT: As I said repeatedly throughout the five-day trial last year, I understood the points that were being made. I got it. Thank you.

Mr. Molton.

MR. MOLTON: Just a little process, Your Honor, and since Boy Scouts was mentioned, I don't know, other than Ms. Beville, anybody in this room who's got as much experience with that case as I do. I don't know if Ms. Lori (phonetic) is here, but she would be able to weigh in if she were here. She's not.

In any event, first point, I know Mr. Hansen, very good lawyer, recited the mantra of getting folks paid. Suffice it to say that on behalf of the members of the Committee, we want people to be paid as soon as possible. We had thought that the tort system was open and people would start litigating and settlements would start happening. But we're back here and Your Honor knows what's in front of you going forward.

And in any event, I want to remind Mr. Hansen that for the last 19 months there have been no payments made to any of the talc claimants whatsoever. I refer Mr. Hansen to what goes on in North Carolina where for years, no payments have been made to those asbestos victims. I want to remind everybody that the term sheet is geared to payment by J&J and LTL, however it worked. I guess J&J is funding the 8.9 billion upon final non-appealable order. Final non-appealable order.

In Boy Scouts, there's money that's already gone as of the effective date, and we don't have a final non-appealable order. That's a condition of the agreement. To the extent that this plan is an attempt to get plaintiff's warring against each other, talc claimants against talc claimants, individual plaintiffs against states, third-party payers against everybody, estates against everybody, all feeding on the same pot, and then we have the indemnification claims by Imerys and Cyprus, final non-appealable order is a long way off Mr. Hansen. That's number one.

Number two, Coalition of Abuse Scouts for Justice, Boy Scouts, that was the name of that ad hoc group from day one. It wasn't of the law firms, it was of the survivors. And the attempt was made to tie their consent under 2019 to the retainer letters, to the retainer letters, Your Honor. And those retainer letters were produced in template form for everybody to see. The argument was made that those retainer

letters contained authorization. And I know my friends from the U.S. Trustee's Office were very, very involved in making sure that was exactly the case.

Indeed, the U.S. Trustee took a very principled position on 2019 in that case that extended the hearings over a number of hearing dates in front of Judge Silverstein until they were satisfied that the actual creditors, the claimants, had given their informed consent to be represented for the collective purpose of an ad hoc group in front of Judge Silverstein. At the end of the day, that wasn't just the retainer letters, although those had to be given out and those had to be given out also in terms of understanding how the payment was made or who was going to be charged, whether the claimants themselves would be charged by the professionals.

At the end of the day, that charge would be passed along to the claimants. But at the end of the day, it was worked out after a number of hearings with an active, proactive involvement. And the U.S. Trustee attorney will no doubt recall that, although I don't believe she was specifically the trial attorney on that case, was that the coalition received signed consents, informed consents, for the collective action by the coalition from 18,000 of the law firm's members.

And that's how that was resolved, and Ms. Gavel will tell me if I'm wrong, if I'm mis-remembering. But one of the things in terms of process, maybe, Judge, the thing to do is to

push this hearing to allow the U.S. Trustee's Office and the other interested parties to take a look-see at what actually is in the 2019, whether the attachments to the 2019, Mr. Hansen says those include the retainer letters. We don't have them. We need them. We need to see them. We're willing to work with Mr. Hansen on confidentiality, whatever's required in order for us to assess them. But we need to see those and come back and deal with this in a short time. I'm not talking about a long time, but a short time. These are all important questions, questions that we have.

And, again, Your Honor, at the end of the day, if Your Honor believes the Boy Scouts precedent informs Your Honor, that's possibly one way to deal with this. I do note that Mr. Hansen said we opposed their participation in the mediation process. So the record's clear, we did not. We said we agreed with the order that allowed the mediators in their discretion to allow anybody they believe to participate. I know that includes Mr. Hansen's group, but that is within the purview now of the mediators.

And lastly, Judge, we've heard a lot about voting and plan. Your Honor has our suspension motion in front of you that's on for next week. We feel that the first issue in this case is dismissal, Your Honor. You're going to hear in a few minutes as to the PI certification op. We got Judge Ambro's authored text order today. The breaking news that I reported

earlier that I reported to Your Honor in the Court that talked about the expedited or accelerated nature of this bankruptcy proceeding and their comfort with that in lieu of declining the extraordinary vehicle of a mandamus to address that situation.

So to the extent if and when we ever get to voting issues and other plan issues, needless to say, a lot of what you heard today may be raised there and may be raised there in more detail and probably evidentiary fashion. So I just want to put a marker on that. And just wanted to say those things just in terms of process, Judge. I hope that was helpful. I didn't expect to stand up, but when I heard Boy Scouts, I think I had to, so.

THE COURT: Thank you.

Mr. Hansen, very briefly, please.

MR. HANSEN: Very briefly, Your Honor. It just sounds to me like what Mr. Molton explained was they started it exactly the same way we did. They represented law firms, even though they had a different name. They relied on the retainer letters and over time in that case, they were asked to go get information from their claimants specifically demonstrating authorization.

So where we start today is we chose to use the name supporting counsel rather than saying, supporting counsel on behalf of their clients. But that's what we're doing and I know you understand that, Your Honor. The other thing I'd

point out is that the TCC has already served discovery on the Ad Hoc Committee of Supporting Counsel as well as the members of the Committee themselves. So they are obviously treating us as a party in interest themselves.

Thank you, Your Honor.

THE COURT: Fair enough. All right.

Oh, Mr. Gordon.

MR. GORDON: Your Honor, I've said nothing. I have like one minute if I could.

THE COURT: That's all right.

MR. GORDON: Your Honor, I just wanted to say on behalf of the debtor, we support the motion to intervene. I'm sure Your Honor's not surprised by that. It's striking to me, sitting here watching this, the extent of the opposition to the motion. This is a sort of a plain vanilla -- they're only asking for the right to intervene in a proceeding. And we've basically heard arguments that go to the substance of their position, whether or not they're even legitimate parties, do they really have claimants.

And to me, it's consistent with what's been going on in this case from the beginning, which is, over-the-top efforts by this Committee to deny the majority of claimants in this case a vote and a right to even be heard on the issues. And this has just happened from the beginning. And I would think from Your Honor's perspective, it would be helpful for you to

actually have available to you the views of a group of claimants who disagree with the Committee in this case.

I mean, the Committee in this case who purports to represent everybody is obviously pursuing an agenda with which there are tens of thousands of claimants that disagree with that, or law firms, if you want to say law firms that disagree.

But it seems to me, from a judicial perspective, it would be helpful to the Court and all parties to allow them to participate. I don't see that does any harm to the TCC. And if there's a technical issue about how you describe the Committee or how you want to denominate exactly who its representatives are, it seems to me that can be fixed.

Thank you.

THE COURT: All right. Thank you.

Thank you all. Well argued.

All right. It seems to me, and we'll probably touch on this with the next argument on the certification process, that the relief sought by the motion, at least today, is rather limited. It is to intervene and participate in the adversary proceeding pursuing the preliminary injunctive relief. Obviously, it's going to be built upon to extend to other avenues in the case.

In listening to the argument and reading the submissions, it is clear to me that this group, however large it is, does not necessarily have its interests aligned with

either the debtor or the TCC. It could clearly come to a point where it's going to try to renegotiate or the plan process itself calls for always continued negotiations. And from what I'm hearing, the interests as far as compensation and their avenues towards compensation may differ from other creditors that are being represented by the TCC.

So, we're speaking of potentially tens of thousands of voices who do need to have representation in this case. I am determining, I am ruling that this ad hoc group, as of now it's Ad Hoc Group of Counsel, based on the representation that each of these law firms do represent the interests of thousands of creditors for whose identity they have supplied, at least in a limited fashion, satisfy the requirements necessary to intervene in the preliminary injunction proceeding consistent with Rule 24(a)(1), 24(a)(2), and 1109.

I am reaching that conclusion based on a condition that I'm going to require, that there will be supplemental certifications filed by each of the law firms, I believe I heard 20 law firms, that form the ad hoc group that they, in other words, a principal from each of the firms has to certify under penalty of perjury that they are authorized to represent the interest of their clients, those identified clients in this case and to support on behalf of these clients they're authorized in this case to support the plan support agreement, and that they have sent out a notice to each of their clients

of their intent to represent their interest in this bankruptcy proceeding and to support the terms of the plan support agreement, or support, however you want to phrase it, the debtor's efforts to implement the plan support agreement.

I don't think that's burdensome. Yes, each of the 20 has to reach out to their own clients and confirm that they are representing their interest in this bankruptcy and they're to certify to this Court that they have done so and that they have, based on their retention agreement, retainer agreement, the authority to act on behalf of all of the identified claimants in this proceeding.

I will give them time to do so. I will ask that it, it be done in the next 30 days. In the interim, I will accept argument from the Ad Hoc Committee today on the certification issue and we will get to that issue in 10 minutes. I'm going to take a break. My back requires it.

I'll ask the Ad Hoc Committee to submit a form of order.

(Recess from 2:31 p.m./Reconvened at 2:45 p.m.)

MR. MASSEY: Thank you, Your Honor.

THE COURT: The floor and the video is yours.

MR. MASSEY: Thank you very much, Your Honor. Jonathan Massey, proposed counsel to the TCC. We're here this afternoon on the argument for motion to certify for direct appeal the Court's PI ruling. And at the outset, I've got a

PowerPoint. But just, I'm aware of two points that are going to be of interest to Your Honor. First, obviously, the Third Circuit's ruling on mandamus that's just come down. How does that affect things? And as Your Honor mentioned they didn't take it off your plate, so you're still stuck with it. But I'll talk about that a little bit more.

And then, second, Your Honor's remarks on the last motion about the limited nature of the relief and the limited nature of the motion at stake how that would fit into the PI order. Because obviously we all know the motion to dismiss is coming down the pike, and I'm sure Your Honor's thinking should I certify the PI order or should I wait and do the motion to dismiss? Is that the main event or not?

And I'll explain that. I believe that the PI order itself involves several foundational issues, which are appropriate for certification now that are purely legal in nature will not be affected by any facts or evidence that will come up at the motion to dismiss hearing. So those would be appropriate, we believe, for certification now. But I'll talk more about that. But I just wanted to acknowledge at the outset the remarks Your Honor had made.

So the very first slide are the three certification criteria, actually it's slide two on the written document, Your Honor is very familiar with these factors. You've applied them in actually several different certification motions that Your

Honor has heard, so I'm not going to read those to you. This was a slide I made before the mandamus ruling from the Third Circuit about why Mandamus strengthened the case for certifying the direct appeal. Obviously, that's been mooted by what the Third Circuit has done. But the Third Circuit relied in denying the mandamus on the recognition that, "The write of mandamus is a drastic and extraordinary remedy and there are other adequate means for the petitioner to obtain the relief it seeks." And one of those alternative avenues for seeking relief is of course appeal.

And, in fact, the debtor, in opposing the petition for mandamus in the Third Circuit, said at Page 17 of its opposition, that the availability of appeal was a reason to deny the petition for mandamus. Now, I think the debtor's argument here is that we should go to the district court. We should appeal the PI order to the district court not to seek direct certification. And the last couple of bullets on this page are attempting to respond to that. I mean, basically the debtors' attempt is to keep the foundational issues away from the Third Circuit for as long as possible, even though what's really at issue here is the Third Circuit's prior decision dismissing this case and what effect that has on LTL 2.0.

And sending this appeal to the district court for it to decide what the Third Circuit meant when the district court has had no prior experience or history with this case doesn't

really make any practical sense. It just delays things and would eventually wind up going to the Third Circuit anyway, and it is really in our view an illogical and impractical attempt to just delay the proceeding.

The first criterion for applying the certification question is the public importance of the case. I don't think I have to talk very much about the public importance of the case as a whole. Your Honor is very familiar with the importance of this case, generally. It affects tens of thousands of litigants, billions upon billions of dollars, and so on. The real issue comes when the debtor says the PI order itself is not an important ruling in this overall case because it's limited in time and scope. It allows for discovery and preparation. It simply says trials and appeals. It lasts until June 15th. So why are we bothering with the appeal of the PI ruling?

Well, first obviously, it affects dozens of talc victims who are awaiting trial across the country. Your Honor's allowed Mr. Valadez to go forward, and Your Honor said I don't want to be hearing now about this whole seriatim of requests for lift stay motions. But there are in fact, obviously, dozens of other people out there who had trial dates scheduled. Marlon Eagles (phonetic) and Meredith Eggley (phonetic) are two of them in Alameda County. There's the Judge Viscomi in Middlesex County has been asked to hold the 22

plaintiff consolidated trial, and she's declined to consider that while the bankruptcy's pending.

I mean, ironically, the debtor told the Third Circuit in asking them to stay the mandate. If you don't stay the mandate, there are at least 20 meso cases that are going to go to trial in the next 60 days. And they told the Third Circuit that back in March. So we all recognize that there are a significant number of people who are going to be affected by the PI order even in the interim.

And the U.S. Trustee has said that further delay would be unconscionable. And in prior cases, like the Gold and Johns-Manville case, the Third Circuit recognized that there's a lot of hardship to asbestos victims in particular, for being forced to wait, and many of them will die.

So in our view, Even though the PI is not as broad as it could be, and even though it's limited until June 15th, reviewing that order would give guidance. I don't know what Your Honor envisions past June 15th. This PI lasts only until June 15th. So there is some reason here for appeal and getting guidance on the legal status of the PI ruling.

The PI order itself also involves issues at the heart of the second filing. Your Honor called good faith a gateway question, whether it's subject matter or not, it's a gateway question. And that effects any PI of any kind. It goes to the Court's legal authority to issue any kind of injunctive relief.

And central to the PI question, in Your Honor's word, was the fundamental question, whether there's a realistic possibility of success. It's the lynchpin of the four prong injunctive standard.

So, that's what Your Honor was deciding when you issued the PI was really was whether the debtor, as you said, would have a realistic chance of reorganizing successfully in light of the Third Circuit's decision. And that's why the Trustee has opposed the PI. I mean, the U.S. Trustee's position is that any reorganization is futile, it's intended to circumvent the Third Circuit's ruling, it doesn't have a chance of success, and that's why you should deny the PI. That was the U.S. Trustee's position. And that just shows that this PI, unlike the first PI actually in LTL 1.0, this PI is more tied in to all the fundamental legal questions at the basis of the bankruptcy.

The first PI had some other issues that Your Honor didn't think warranted separate certification. This one is actually quite intertwined with the fundamental question of what are we doing here in light of the Third Circuit's decision. I know they didn't want to hear about mandamus, but they said there were other ways to hear that question. And so I think, fundamentally, that's the real question before this Court on the PI as well as the motion to dismiss.

Now, the next slide. The question here is really the

debtors putting the Third Circuit's decision at issue. I mean, the TCC, which represents, as you heard, all talc creditors, a fiduciary duty to talc creditors, the U.S. Trustee's Office, the state attorneys general, other claimants have all shown that the Third Circuit decision really does foreclose the second bankruptcy filing. We'll get into some of those issues later.

But the debtors' takes the opposite view. The debtor has said Footnote 18 was Mr. Kim's revelation that he read that and he had the idea, oh, well this is how we do bankruptcy in LTL 2.0 is we surrender the funding agreement. So the question is, was that a correct reading of footnote 18? The rest of the world doesn't seem to think so. The debtor believes it was. And the debtor says the Third Circuit decision changed the law, rendered the funding agreement void or voidable. I mean, that is a question which really the Third Circuit should authoritatively resolve.

Did they change the law in a way that nobody could have predicted? I mean, that's the debtor's position for why -- that's at the foundation of this bankruptcy, is do you change the law on us? No one could have predicted it. The funding agreement is void or voidable. We traded it away because it wasn't worth anything anymore.

I mean, if that premise is wrong, then the rest of this proceeding is just paper shuffling and we should address

that in the Third Circuit now. That's kind of our position on why the PI order makes sense, why certification of the PI order makes sense. And Your Honor has identified additional legal questions throughout the last couple of hearings that are also basically tied into what I've just discussed, but are worthy of certification in their own right.

I mean, Your Honor asked, does the manner in which the transactions were undertaken give rise to an independent basis for finding bad faith? Possibly. The transaction certainly appeared to be manufactured to create financial distress in direct response to the Third Circuit's ruling. I mean, Your Honor is teeing up the question of whether a debtor can manufacture financial distress as a basis for good faith, regardless of whether that's technically a fraudulent (indiscernible) or not.

Leave all that aside. Just, can you create financial distress by doing something that is a naked attempt to achieve financial distress to fit yourself within the Third Circuit's ruling? That's sort of just a straightforward legal question.

Next question that Your Honor has teed up. There are unresolved issues such as the voidability of the 2021 funding agreement. I mean, it's undisputed that the funding agreement applied outside bankruptcy. It's undisputed that it applied in the event of dismissal. Mr. Gordon has admitted that. It's undisputed that dismissal was reasonably foreseeable, that it

came out of the PI hearing on the 18th and so there are no facts relevant to this question at all.

This is a straightforward question of, actually it's North Carolina law because the funding agreement is covered by North Carolina law, but is there frustration of purpose within these parameters? And frankly, this is like a first year contracts law school exam question. It's not a question for a motion to dismiss trial. It does not depend on any kind of factual record beyond what we've already got.

I mean, Mr. Kim has actually testified twice that the funding agreement applied outside bankruptcy. In his first-day declaration in LTL 1.0. He reaffirmed that testimony later.

I know they've got an argument for why they think that the reason that the dismissal was predicated on the funding agreement upset their expectations. Whatever the merits of that argument, we have a very dim view of the merits of that argument, that's a legal argument that can be teed up now and decided. I mean, there's just no -- the motion to dismiss trial is not going to affect that question.

And then another question Your Honor is posed, as to actual fraud, can the Court conclude that there has been actual intent to hinder, delay, and defraud creditors? Maybe. And we think, actually, that issue is unusually susceptible to a legal determination. You might think that a lot of times actual fraud is hard to prove and difficult, you know, it's subjective

intent is something that you have to have a trial about.

But here, we know. We know what happened. We know that LTL surrendered the funding agreement so it would be sufficiently distressed to invoke bankruptcy. And part of that may be the void or voidability point. But that's also a legal question. We know that creditors were denied access to the 2021 funding agreement and cash flow from the consumer business. Remember that was spun off in January.

So HoldCo, they're going to argue that HoldCo's insolvent because it doesn't have the cash flow from the consumer business. That is a product of their own spinoff. And courts applying the 548(a)(1)(A) actual fraud test often look at badges of fraud. So if you want to look at objective evidence of indicia of fraud, I mean here, of course it's here in spades.

I mean, the transaction involved the most significant asset, took place basically in secret outside the normal course of business. It wasn't disclosed in advance to anybody. I mean, you remember also it was listed in the March monthly operating report as the funding agreement's still in place at the very time when all the paperwork was being done to terminate it.

So there's a paper record here of badges of fraud as well as basically what the corporate purpose was in determination and substitution agreement that resulted in the

end of the 2021 funding agreement. And so there are cases, there are plenty of cases, here are a few, where actual fraud is decided on summary judgment on basically the record that we've got now.

And insolvency, as you know, is not an element here. It would be an element for constructive fraudulent conveyance, but not actual fraudulent conveyance, so all the questions at the motion to dismiss trial about the financial situation that LTL and HoldCo and how liquid or HoldCo's assets and all the rest of that is not going to affect this issue. It's basically teed up now the way it's going to be teed up later.

So in our view, all of those questions are tied into the PI, don't need a motion to dismiss trial, are really important, and the Third Circuit is the best situated forum to resolve them. Even financial distress actually has a legal issue, this slide, Slide 10. The financial distress angle here is interesting because we know that LTL did not do any analysis of its talc liabilities after the Third Circuit's decision.

And there are board minutes from April 2nd that say that where the board acknowledged it had no estimate or valuation of aggregate talc liability and that LTL's CFO wasn't aware of any such analysis when Mr. Dickinson testified to that on the 17th. So basically, the question here is, whether you can shoot first and analyze later in bankruptcy. In other words, whether you can file for bankruptcy without actually

having done an analysis of your liabilities and then come to a motion to dismiss trial and say we've got experts and witnesses and other people who are going to generate a record to demonstrate that we were in fact in financial distress on April 4th, even though we didn't actually do that analysis ahead of time.

And that's actually a good legal question because I think the SGL Carbon case doesn't hold this, but it disparages the post-hoc rationalization by the debtors' attorneys. Basically, it says, well, it's kind of late in the game to be finding financial distress after you've actually filed for bankruptcy. So even if you were concerned about, I mean, admittedly, there will be other financial distress issues decided at the motion to dismiss hearing.

There's going to be evidence on the financial condition. I'm not denying all of that. But there is still a financial distress issue, which could be decided on the papers as we are now. So the legal standards governing PI relief are also in our motion. I don't think that there is -- I mean, I don't think we have to spend too much time on it.

Except I do think that the debtor in its papers opposing the instant motion has said that the Third Circuit did not address the issues relating to the injunction in its decision. That the Third Circuit decision was all about the motion to dismiss. But there's a footnote, Footnote 16, where

Judge Ambro went out of his way basically to say, hey, there are some issues here on the PI which we need to talk about and it said this Court's prior analysis lacked full discussion of three pertinent factors. One, J&J'S independent tort liability; two, the whole 1979 transfer agreement, the books and records issue; and three, whether you can indemnify punitive damages liability, whether LTL could assume J&J's punitive damages liability because in New Jersey, there are restrictions and limits on the indemnification obligation for punitive.

The other thing I think that's worth saying about the PI, which the Third Circuit decision effects, is that the PI rests on a finding that trials against non-debtors would negatively affect mediation, valuation, and estimation. But in this last bullet, the Third Circuit actually took the other view of what talc litigation would do. It said it would help rather than hinder reorganization by providing the Court with better guideposts, particularly when it's tackling valuation and estimation.

And it dropped a footnote at that point that said, hey, in the A.H. Robins bankruptcy, there was the benefit of 15 years of tort data. Actually, a lot of what we hear today kind of supports that view. There are a lot of fundamental disagreements about the values and various kinds of claims. I don't want to go into that. But the Third Circuit was able to

say when you've got a history, a track record, stuff you could look at, that benefits. So I don't think the Third Circuit was saying, in fact, it said the opposite. I don't think it was saying that there was irreparable harm from allowing litigation against non-debtors to proceed. Okay.

So the last slide I have, last point I want to make is just a practical point, which Your Honor has always seen before, that how do you materially advance the process of the case? Do you send this appeal to the district court, which has had, as I said, no real experience with this case to review these questions without the background that Your Honor has or the Third Circuit has? And, as you said before, it seems senseless to do that.

And the last bullet, I just want to point out, I mean Congress when it amended Section 158(d)(2), said we want more decisions to go to the courts of appeals. We don't like this idea that the cases are going from the bankruptcy courts to the district courts, they're not binding, they lack *stare decisis* value and results in a dearth of appellate precedent on bankruptcy. I mean, Your Honor's reference to the Supreme Court case shows there aren't that many bankruptcy cases that are getting decided certainly by the highest court, also by the intermediate appellate courts, and Congress was trying to change that in 2005.

So I think there's a congressional purpose here as

well as just practical sense, like where does it make sense to send this appeal? It's primarily legal. It's tied in with fundamental questions about whether this bankruptcy belongs here, and it doesn't make any sense to send it to the district court.

Thanks.

THE COURT: All right. Mr. Massey. Thank you.

Let me ask you a question and I'm trying to be pragmatic. I know the rest of the week, the Circuit is at a Third Circuit conference, they're not going to be doing too much. Maybe that's why they rushed the decision today.

MR. MASSEY: Yes.

THE COURT: To get it off their desks.

Even if I were to enter an order tomorrow authorizing direct appeal, that just begins a process of filing motions in the Circuit --

MR. MASSEY: Correct.

THE COURT: -- and briefing schedules.

MR. MASSEY: Correct.

THE COURT: And then they may have oral argument or they may not.

MR. MASSEY: Right.

THE COURT: I have a limited, and it's limited compared to the prior injunction, a limited injunction that expires on its own terms June 15th. Is it realistic to think

that you're going to get this argued in the next 30 days? Or a decision, even a decision to take the appeal, let alone to argue the appeal before it's mooted out. Isn't the Circuit going to look at it and say it's moot? And then, let me just finish, go through it all, will go the next step.

And if it's not moot, the reality is, I'll be possibly or probably in the midst of that week, June 15th, or close to it, a motion to dismiss, which will touch on the various issues that, while you say the Third Circuit need not address because they're factual and it's not necessary, they have a bearing. Some of these issues are going to have a bearing.

How practical is that the Circuit's just not going to say wait until the motion to dismiss? First of all, there's no guaranty, A, I could grant the motion to dismiss, which moots out it again, so the Circuit's going to look at that alternative. B, if I deny the motion to dismiss, it still doesn't mean I extend the injunction. And, C, if I deny the motions to dismiss and extend the injunction, it's going to have to be on an application by the debtor based on, in all likelihood, what I'm hearing at the motion to dismiss.

So how is this even practical? And why try to throw this up to the Circuit now when it's in all likelihood going to be mooted out or could very well be mooted out one way or the other, either on my granting a motion to dismiss or the

injunction not being extended.

MR. MASSEY: Right. And I take all those points. I think the reason to send it up is to give them the opportunity to do what they want. If it gets mooted out, then the appeal gets dismissed. If the appealed winds up being mooted, there's just, you file a notice of dismissal in the Third Circuit and that's nothing.

If it doesn't get mooted out, then what happens on June 15th becomes important because this appeal could provide guidance for whatever comes next. There are a lot of contingencies as Your Honor's comments make clear. But I think if we don't certify the appeal now, then we're basically foreclosing the Third Circuit's opportunity to review anything if it wanted to.

And denial of mandamus can read it different ways. One way to read it would be, hey, there are other ways to get here. Appeal is obviously the obvious one. And so here we are. We're saying we're going to present you with an appeal on legal questions. It's true, if you wanted to decide this before the motion to dismiss, and I know we're about to discuss the scheduling of the motion to dismiss, and we're all hopeful that this motion to dismiss will be heard as early as possible. So it may be, certainly, that you certify appeal and it winds up getting mooted.

But if you don't certify the appeal, then you've made

the Third Circuit's decision for them, and they don't have the opportunity to say, we would have wanted to hear that. We would have expedited it. We wouldn't have heard argument, we would have just ruled and there you are.

So we really don't know what the Third Circuit's preference is, and so my position is, well, I'll offer it to them, and if they want to take it, it's there. If they don't want it, they'll deny the petition for leave to appeal, as Your Honor said, or if it gets mooted, it gets mooted. But this is kind of a point where we either foreclose that option to them or we keep the option open.

THE COURT: One could say that's what you did with the petition for mandamus. You offered it up and --

MR. MASSEY: Yes.

THE COURT: -- and they said no.

MR. MASSEY: Yeah. That's right. But they said, no, not --

THE COURT: I know, it's extraordinary relief.

MR. MASSEY: Yeah, right. They said you've got other ways to get here, so now we're in the next way to get here. And so I do think, look, our position is, not just the TCC's position, the U.S. Trustee's position, the state attorneys general, is to fundamentally this bankruptcy, the second proceeding, is not in conformance with the Third Circuit's decision. So I make no apologies for saying, I think it makes

sense to ask the Third Circuit to get involved.

The debtor thinks that's obstruction. I mean, we think it's actually rule following and enforcing the law. We think there was a decision that was pretty clear and, obviously, they have a different view from us about what that decision means. But to say that the forum that rendered that decision shouldn't be able to say what it means or somehow that it's gamesmanship to go ask the Third Circuit to enforce its mandate, I mean, that's not the rule of law and the way our system of justice works. I have no apologies for that.

THE COURT: Fair enough. All right. Thank you, Counsel.

Is there anyone else arguing in support of the certification motions?

MR. GUPTA: Yes, Your Honor. Can you hear me?

THE COURT: Yes. Mr. Gupta. Good afternoon.

MR. GUPTA: Yes. Good afternoon, Your Honor. Deepak Gupta from the Gupta Wessler firm. The Ad Hoc Group of Mesothelioma Claimants have filed a motion for me to appear pro hoc vice. So with Your Honor's permission, I'll address the certification motion as well. And I also appreciate the ability to pipe in here quickly by Zoom.

And I'll try to be quick --

THE COURT: Wait one second. Mr. Gordon.

MR. GORDON: Your Honor, Greg Gordon on behalf of the

debtor. I'm not sure I heard that exactly, but is he purporting to appear on whose behalf? I'm not sure.

THE COURT: The Ad Hoc Committee of Mesothelioma Victims, I believe -- Claimants.

MR. GUPTA: That's right. And we --

MR. GORDON: So a group that has not even sought intervention?

MR. GUPTA: No, no. I'm here on behalf of the Ad Hoc Group of Mesothelioma Claimants. We have filed a pro hoc vice motion to appear. We're appellate counsel for the Ad Hoc Group of Mesothelioma Claimants. We appeared in the Third Circuit in this proceeding before. But this is my first time before Your Honor.

THE COURT: The Ad Hoc Group, I believe, did file a separate motion --

MR. GUPTA: Correct.

THE COURT: -- to certify.

MR. GUPTA: It's on the agenda for today. That's right. And so that's all I'm addressing. And I'll be, see if Mr. Gordon has any --

THE COURT: Well, I think we're all struggling with --

MR. GORDON: Procedure here --

THE COURT: -- what seems to be a procedural quagmire. But before you start, Mr. Gupta.

MR. MASSEY: I don't understand what the confusion is. Mr. Gupta represents the Ad Hoc Group of Mesothelioma Claimants. Katherine Tolleson, my client, was an appellant to the Third Circuit. She opposed the preliminary injunction, as did Evan Plotkin, who's represented by the Dean Omar firm, as did Giovanni Sosa from the Cooney and Conway firm. We opposed the PI. We joined the motion to certify for immediate appeal. Mr. Gupta seeks admission pro hoc to argue on our behalf here today.

All of these are claimants that have counsel who have entered appearances for them and that opposed the PI and it's on the agenda. And so this is not the situation. There's no issue here.

MR. GORDON: So, Your Honor, just to point out, I mean, there's obviously an inconsistency in positions here. On the one hand, the Ad Hoc Committee of Supporting Claimants files a motion to intervene. It's subject to staunch opposition, but any party on the supporting side gets to show up and say whatever they want, file any pleading they want, not follow the rules of intervention.

I understand today, I guess that's where we are if people have filed these things. Maybe that's our bad on that. But there should be a consistent approach going forward in terms of who's allowed to be heard. It shouldn't be that Mr. Thompson can come up here and argue that someone shouldn't

be allowed to intervene when he's appearing on behalf of someone who hasn't intervened.

THE COURT: My understanding of the distinction so far to date is that Mr. Thompson represents and is representing to the Court that he's representing specific claimants who have taken a position in this case. And the Ad Hoc Committee for Settling Law Firms is one removed. It's the law firms not the claimants, which is why I tried to address it with the notice and the authorization. Then everybody will be on the same level.

For purposes of today, I'll listen to argument.

MR. GORDON: Understood.

THE COURT: Thank you.

MR. GUPTA: Thank you, Your Honor.

We'll probably spend just as much time talking about my ability to be here as what I wanted to share with you because I agree with everything that my friend Mr. Massey had to say, and my presentation won't be extended.

In short, we think this Court was correct the last time around when it's certified an appeal and that certification of an appeal is even more appropriate this time around. And I want to start, Your Honor, with the question that you asked Mr. Massey, which is why do it now and could this become moot?

And I think it's important to emphasize one thing

that Mr. Massey did say, which is, the question really is where this appeal is going to take place and when because notices of appeal have already been filed to the district court and that doesn't have much to recommend it, that there be an appeal in the district court on this issue. So that injects an additional decision maker into the process. It injects uncertainty into the process. That district court decision maker may have views that are different from Your Honor and they may also be views that are inconsistent with what the Third Circuit ultimately holds.

And so on threshold legal questions, not just about whether this was a good faith filing, but also, as I'll get to, questions about the Court's power to act and the Court's power to enjoin litigation in state court with respect to third-party non-debtors with respect to their independent liability. Those questions will be teed up and there could be different decisions in the district court and then again in the Third Circuit. And all of that just prolongs the inevitable because of course there will be appeals on those questions.

And so I think the basic submission we're making to you is, it is better to get more guidance early if that's what the Third Circuit is prepared to provide. And so all you would be doing by certifying is providing the Third Circuit with the opportunity to take this matter rather than have it decided by a district court, have it decided by the Third Circuit and

provide everybody, Your Honor and all of the many parties involved, with guidance going forward.

And I think the issue that we want to focus on, and this is what we focused on in the Third Circuit, is the question, as I've alluded to, of the propriety of the injunctive relief with respect to third-party non-debtors for their independent liability. The previous Third Circuit appeal I think, demonstrated that that was a very significant issue.

The appellants in LTL 1 raised serious unsettled questions about the lawfulness of the Court's order. And this Court's order itself, the most recent order, acknowledged that the unsettled nature of the authority. At Page 11 of your PI order, you referred to the lack of clarity regarding the appropriate authority to enjoin third-party actions.

At Page 8 of your order, you acknowledged, recognized that courts in the Circuit view the source of authority to extend the automatic stay as an open-ended question. And most recently, in the Seventh Circuit heard argument in a different bankruptcy, in the 3M bankruptcy, where all three members of the panel in that Court of Appeals expressed serious concern about the propriety of injunctive relief of that kind.

The debtor argues in its opposition to certification at Page 10, it says, "The Third Circuit has already declined an opportunity to provide further guidance on jurisdiction to stay actions against third parties during a bankruptcy case." But

that makes no sense. The Third Circuit held in the very last sentence of LTL 1 that it was dismissing the case and so that annulled the litigation stay ordered by the Court and made moot the need to decide that issue.

But that issue isn't going away, Your Honor. It's not a transitory issue. It's in fact central to this whole bankruptcy proceeding just as it was central to the previous proceeding because I think LTL has acknowledged that the whole point of this proceeding, this proceeding is not worth the candle unless they can get injunctive relief against state court litigation against J&J over its independent liability.

So that issue is going to have to be addressed. And it will be need to be addressed by the Third Circuit. And our submission is simply that the Court ought to give the Third Circuit an opportunity if it wants to take up those questions now, along with all of the other threshold legal questions that Mr. Massey addressed that are not fact bound.

And so I think all the things that the Court said about the public importance of this proceeding are just as true now as they were then. And even if you set aside all of the things that my friend said about their arguments about whether or not this court's decision is consistent with the mandate of the Third Circuit, even if you set aside all of those questions of good faith, there are still fundamental questions about the Court's propriety to act.

And those can be characterized as you alluded to earlier. You can characterize them as subject matter jurisdiction. You can characterize them as merely statutory questions about the Court's power. There are many commentators that have suggested those questions have constitutional dimensions as well. But those are basic questions that go to the architecture of this proceeding. And so if the Third Circuit wants to, and it has the opportunity to, it should address them and provide guidance to everyone.

Thank you.

THE COURT: Thank you, Counsel.

All right. On behalf of the debtor.

MR. GORDON: Thank you, Your Honor. Greg Gordon on behalf of the debtor, I do have a PowerPoint. May I approach?

THE COURT: Yes, please.

Thirty pages. I'm thinking the 25-page limit works best.

MR. GORDON: This will go fast, Your Honor.

All right. First slide please.

Next slide. No slide.

THE COURT: There we go.

MR. GORDON: So, Your Honor, just to start by way of introduction. And I do, I recognize there's a number of slides, but I don't think this is going to take me that long.

So I think it's important to start with the

proposition that, as Your Honor just said in asking one of your questions, the PI opinion is extremely limited. And importantly, for purposes of this relief that's being sought today, it includes an extensive discussion of the Third Circuit's LTL decision.

And if you just step back and look at the certification motions from a very high level, they don't even come close to meeting the applicable standards for certification. In fact, they argue the exact opposite because what they're saying fundamentally is is that we have a controlling decision, but you're not following it. And that's the opposite of what certification is about.

And of course, we already have a situation on top of all that, that the movements have already filed motions to dismiss. And the issue of good faith is obviously squarely in the middle of those motions to dismiss. It can be addressed as Your Honor pointed out more directly in connection with the motions. And obviously, at the time this was done, there was the mandamus petition pending. That's been taken care of.

Next slide.

And Your Honor, this is just the outline of what I'm going to cover here.

Next slide, please.

Next slide.

So, Your Honor, just briefly, on the point about the

order being extremely limited. As Your Honor just pointed out, it's only for 60 days expires on June 15th. It enjoins trials only and otherwise, it permits all other pretrial activity to proceed, including discovery. And it's also important to note that since the time you wrote the PI order, you've lifted the stay as to the Valadez case and that trial is set to proceed.

And I think it's important to note that no other party had sought similar relief. So you saw on a slide just a few moments ago some references to claimants who purportedly have other trials that could have gone in the 60-day period. To my knowledge, that wasn't brought to the attention of the Court. And the one thing that was, Your Honor took care of it to the point that I think a couple of times in your PI order, you found that and believed that the talc claimants wouldn't be harmed by the limited relief you were entering.

Next slide, please.

Next slide.

So, Your Honor, this just sets forth the applicable principles. It really boils down to three things. Is there no controlling decision on a question of law? Does the matter involve an issue of public importance? And will certification materially advance the case?

Next slide, please.

Again, fundamentally, Your Honor is aware of this from before. The idea is to basically ask an appellate court

to provide guidance on questions of law to basically build up or develop bankruptcy court precedent. And I think when you're considering the motions before the Court today, you have to think in those terms. Is there any legal precedent that would be developed by certifying your decision to the Third Circuit?

Next slide, please.

Again, I'm not going to spend much time on this, but generally fact bound appeals aren't suitable for direct appeal. I think, fundamentally, what you're being asked to is to certify a fundamental question of good faith on the basis that that's a legal issue I think is what's being represented to the Court when in fact, it's a very fact-bound issue. Whether financial distress exists or not is very fact bound. I think it's obvious from the Third Circuit's ruling in late January that the Third Circuit viewed it as a fact-bound issue.

Next slide.

And, again, to the contrary, if you have pure questions of law, then it's a different story with respect to certification.

Next slide, please.

And next.

So part of the problem here I think with these motions is that the claimants are trying to sort of fit a square peg in a round hole because they're trying to make, and their focus is on -- they're trying to make this all about good

faith. And so when you look at the issue they're raising fundamentally in connection with the injunction, it's LTL's alleged lack of good faith in filing the second case.

But if that's your issue, and that's what they're claiming and that's what you heard again today, no one can take the position there's an absence of controlling authority on that. We have a controlling opinion from the Third Circuit that was just issued on January 30th. And, again, Your Honor extensively discussed it. The debtors now taking the position that that's not binding and the movants, otherwise, are conceding that it's a controlling decision. And in fact, they say the question of good faith has been settled in the Third Circuit. So again, that's all the opposite of what the standard is for certification, which fundamentally goes to, is there an absence of controlling precedent here? Obviously, all sides agree that the controlling precedent exists.

Next slide.

And, frankly, even if it that weren't the case, in our view, certification still wouldn't be appropriate in this instance because the PI standard here only very indirectly or tangentially considers good faith. It comes up as Your Honor noted in your opinion as one of the prongs for preliminary injunctive relief, the reasonable likelihood of success prong, which as Your Honor noted, requires a showing of a reasonable likelihood, not a certainty of a successful reorganization.

In addition, Your Honor acknowledged the limited record before it and said the factual record is too uncertain and undeveloped to make a finding regarding good faith and *sua sponte* dismiss the case. And I think that's really a lot of what these certification motions are about. These claimants want to take issues that are more properly heard and considered in dismissal and have them heard through this vehicle based on a limited record that they think puts them in a better position to prevail.

And, again, I think Your Honor recognized, and this will be our view, that questions like those, questions about good faith, questions about financial distress, questions about dismissal, they should be raised and considered in connection with the motions to dismiss, which Your Honor has already indicated are going to proceed on a prompt schedule.

Next slide, please.

And of course, again, you can see all the motions to dismiss that have already been filed. They all raise the issue of absence of good faith. That's the centerpiece of all of them. And so they overlap completely with what's really the focus of the arguments that the claimants are seeking to have you certify to the Third Circuit in connection with the PI order.

Next slide.

I'll skip over this, obviously, because that no

longer exists. It is interesting though. I think Mr. Massey said that we're trying to have it both ways, the way we've argued with respect to the mandamus. I would say they're the ones, the claimants are the ones trying to have it every which way by basically making the same arguments in a multiplicity of context. So this slide is just intended to show the duplication.

And, again, you can skip the middle column, but the allegations they're making in the dismissal motion overlap very much with what's in the certification motion. And, obviously, with the arguments that were made in connection with the PI order. They're all the same.

They're all the same. The big difference is they were indirect and tangential in the PI context. They were done on an expedited basis. There was a limited record. And I think Your Honor was correct in your ruling and thinking about these issues could be handled more directly in connection with dismissal as opposed to in the PI.

Next slide, please.

Here, just to say good faith is obviously directly relevant to the dismissal. That's what the standard is all about under Section 1112. They can be decided on a full factual record. And Your Honor noted in your opinion the fact that the Third Circuit was critical of Your Honor's findings, your factual findings in connection with the dismissal ruling

in the first case.

And we should have an opportunity, we, the debtor, should have an opportunity and Your Honor should have the opportunity to consider those questions based on a full and complete record.

Next slide, please.

The other thing I think it's important to note, and I think Your Honor recognized this as well in the PI opinion, is that you indicated that you found it difficult in the first case to identify controlling issues that hadn't been addressed in connection with preliminary injunctions and mass tort cases. And, fundamentally, you sort of went back and relied on your rulings from before and you had cited a lot of authority before. And I think ultimately the McCartney Third Circuit case was the one that you felt addressed most of the issues that were raised by the other side from a legal perspective in opposition to the PI.

But among other things, you found an identity of interest between the protected parties and the debtor. You found shared insurance coverage, you found the existence of indemnification obligation, and you also found that continued litigation outside the case would adversely affect the debtors' ability to reorganize in the case because the same claims will be being liquidated outside of bankruptcy while efforts were being made by the debtor to have them resolved and paid in the

bankruptcy.

And as Your Honor noted, there's nothing in the Third Circuits January 30 opinion that changed any of that analysis. And, again, I think that's a very important point for certification. The arguments have been made that the Third Circuit has already weighed in, therefore, you should want to get this to the Third Circuit immediately. Well, the Third Circuit didn't weigh in on the PI. Now it's true, as was pointed out just a few minutes ago, there was a footnote or maybe footnotes that *indicta* raised some questions, but otherwise there was no ruling by the Third Circuit on the PI and certainly no pronouncements by the Third Circuit about the law with respect to preliminary injunctions or the extension of the automatic stay in a bankruptcy case.

Next slide, please.

Now I think it was Mr. Crouch separately raised the jurisdictional issue. Your Honor actually cited a case this morning that Mr. Thompson, which is part of arguments coming up in the Bestwall hearing on a motion to dismiss for lack of jurisdiction based on the U.S. Constitution. But the point is, this is another issue that just doesn't warrant certification. There's not an absence of controlling authority. There's not a disagreement among the Circuits. I mean, this is a very straightforward analysis with respect to jurisdiction.

And Your Honor, again, I think noted that, the law

covered that. I thought your opinion went into great deal in terms of the applicable law on jurisdiction. It supported your jurisdiction to entertain a PI request.

Now, we've lost our -- do we have a bandwidth problem again?

MULTIPLE SPEAKERS: Proceed. I can cut that.

MR. GORDON: It's not on here.

UNIDENTIFIED SPEAKER: Maybe disconnect. Whoever's doing screen share, stop screen share.

MR. GORDON: Could we try stopping and starting the screen share? See if that will work.

THE CLERK: It's back up?

MR. GORDON: No.

THE COURT: Not on the big screen. There's a [indiscernible).

So we're on Slide 19. Maybe the cap should be 20.

(Laughter)

MR. GORDON: You have to admit that I'm going pretty fast. Well, you don't have to.

THE COURT: Oh, no it's an improvement over the 90 page slide you had the other last week.

MR. GORDON: Fair enough.

The suspense is building and the best slides are always the last few.

THE COURT: Here we go.

MR. GORDON: Okay. And I think, again, this slide is just intended to point out that, I think the first go-round, the reason that you certified the PI order the first time was because, in your view, it didn't make sense to have that proceed by way of a different -- or have a different appellate status in the motion to dismiss. It wasn't because you found that it separately warranted certification under the standards and you kind of reiterated that in connection with the request by -- for certification by the States of New Mexico and Mississippi, but there you also certified it because of the issues about police power, the police power exception.

And, again, if you look at the LTL opinion, the Court had an opportunity, if it wished, to weigh in on jurisdiction or any other legal issue with respect to the preliminary injunction and did not do that.

Next slide, please. Next slide, please? Next.

So, again, I'll just cruise past this. This issue of public importance is a standard that's viewed narrowly and the standard is high, but let's go to the next slide, please, 22.

So, in our view, it's clear this is not a matter of public importance and, number one, it's because there isn't a question of law lacking precedent, controlling precedent. It doesn't transcend the parties in the sense that, again, what the movants are arguing simply is that Your Honor has misapplied an existing authority from the Third Circuit and

misapplied it to the facts of this case.

And that's what, in my mind, makes this very different from the certification from the first case. You know, the other side is basically saying to you, you certified it before, you should certify it now. But unlike before when you had a dismissal request in front of you or you had entered a dismissal order, that was about the entirety of the bankruptcy case, here we don't have that. There's no motion to dismiss before the Court. Again, we're back to an order that's very, very narrow in scope that will expire by its own terms in a matter of weeks, and all that's -- and this order that's up is the type of order that Your Honor found before wasn't worthy by itself of certification.

Next slide, please.

So here, unlike before, there's no concurrent dismissal order. The key question that the other side is focused on, and that question being good faith, was only addressed on a preliminary basis and, again, on a limited record. Since then, multiple motions to dismiss have been filed and are pending that raised that issue over and over again.

And so, again, from a public importance perspective, it seems to us that make this situation completely different from the situation Your Honor faced back in the first case.

Next slide, please.

And the point as well is appellate review is otherwise available because, you know, the other side is obviously anxious to get this good faith question and the dismissal question back before the Third Circuit and, they're so anxious to do so, they're trying to do it through a PI order. That's the square peg in the round hole concept. But they can pursue an appeal if Your Honor -- and, of course, we don't know how Your Honor is going to rule, but if Your Honor rules against the motions to dismiss, decides to deny them, they can appeal it then; they can seek certification then. And they even have a right to appeal later in the case, if we get to the point where there's plan confirmation where Your Honor has to make a finding of good faith, that issue can be raised at that point.

So this is not a situation where like you see in other certification situations where appellate review would not otherwise be available or appellate review would be lost for some reason.

Next slide. Next slide.

And, again, this concept of materially advancing the case, the other side is making a big push here that we're going to appeal this to the Third Circuit anyway, this will materially advance the case. And, of course, you found this before. When I went back and looked at your ruling before, Your Honor was very focused on this. I think it was the first

standard that you addressed and you talked about the extent the record had been developed and how no real purpose would be served in the District Court because there were no further findings that would need to be made by the court. It was -- basically, everything was there, it was in a position to be resolved by the Third Circuit.

Next slide, please.

Well, that's a far cry from where we are here with an order that's limited in time and scope, where there's no concurrent dismissal order.

And, again, I think the important thing to note, it's not inevitable this appeal would even reach the Third Circuit. That's the other point. They argue that we're going to be in the Third Circuit anyway and, frankly, in this situation, I highly doubt that. Number one, because the order ends on June 15th and, as Your Honor pointed out, you'll probably never get that far.

And, number two, it's going -- in my view, it will be taken over by the motions to dismiss because that's really what the focus is, that's what they've asked for. Every -- almost every lawyer that comes to the podium for the other side makes a plea that this case should be dismissed. They ask it to be *sua sponte* dismissed; Your Honor didn't do that, based on the incomplete record. I think you indicated as well you thought that would deprive the debtor of due process.

Obviously, that was up to the Third Circuit in some form in connection with the mandamus; they haven't done that either, they denied the mandamus.

And so this idea that it's inevitable that this would ultimately get there, it just seems to me, is not -- that's not a foregone conclusion because I don't see that it ultimately serves any purpose, because what they really want, what the other side is really asking for is dismissal. And if you think about it, how is this going to work that if you allow this to go to the Third Circuit, that you have two appeals ultimately that are there, potentially, that raise the same issue, one raises it directly, the other raises it indirectly, one presents it on a fully-developed record, the other presents it on a partial record put together in connection with an expedited process that led to a very limited, short-term order. That to me just seems to utterly belie a request for certification and show that the standards can't even remotely be satisfied with respect to an order as limited as this order is.

Next slide, please. And next.

All right, before I get to that, Your Honor, I just want to check my notes for a couple of things.

One of the counsel, I think it was Mr. Gupta, had argued that -- and I think Mr. Massey did as well, that the legal questions should be sent to the Third Circuit right away

and that this is basically an affront to the Third Circuit's decision, this case is, and they should have an opportunity to look into it, but what are the pure legal questions that we're talking about?

I think what they're talking about is good faith and I think they're talking about financial distress, and I would submit to Your Honor that those are highly fact-bound questions. I think the Third Circuit believes they're highly fact-bound questions, I think that's one of the -- probably the primary reasons they sent it back to Your Honor to actually do the fact finding that they've asked for.

And, again as Your Honor noted, the Court was critical before with respect to the factual findings that were made in connection with the dismissal motion the first time around.

I think, again, another point -- and I think this is telling, this argument that's been made, I think Mr. Massey made it that we're not permitted to put in evidence that the committee characterizes as post hoc rationalization of our decision to file bankruptcy a second time. And I would submit that there's no legal principle that would support that point of view that there's some limitation on the evidence that we can put in. In other words, that we can't put any evidence in beyond what might have given to a board in the board meetings leading up to the filing.

And, again, that to me doesn't make sense, but it's transparent in that, to me, that shows that what the real goal here is to get the fundamental question of good faith to the Third Circuit on a record that they know is a very limited record in hopes that they can convince the Court based on an incomplete record and very little -- and a constrained ability by Your Honor to actually make the fact findings that should be made in the hopes that they're in a stronger position to obtain a dismissal from the Court, and I would say that that's not appropriate.

So, Your Honor, in conclusion I would just say that this is a situation that's very different from the situation Your Honor had in the first case in connection with the dismissal ruling and the PI ruling, which were concurrent. This is a very limited opinion, it was -- as you acknowledge, it's on a very limited record, and it's not the type of opinion that's suitable for direct appeal.

There is no lack of controlling authority. In fact, to the contrary, all the parties to this proceeding agree that there is controlling authority, they just have a disagreement as to how that controlling authority should be applied to the facts and, again, that's not a basis to certify.

The issue that they actually want to litigate is more directly pending in front of Your Honor and, for that reason and for these others, a direct appeal won't advance this case,

what it will do is just distract the parties and require them to focus on the good faith issue in the Third Circuit in an indirect context, on an inadequate record, at the same time they're trying to more fully litigate the issue in this Court and provide Your Honor with an opportunity to more fully make the findings that the Third Circuit would expect you to make.

THE COURT: All right.

MR. GORDON: Thank you, Your Honor.

THE COURT: Thank you, Mr. Gordon.

Mr. Hansen? I'll note, I got a text from law clerks that said, if we have a slide limit, there would just be more bullet points on each slide.

(Laughter)

THE COURT: So it's not going to get anywhere.

MR. HANSEN: No slide deck for me, Your Honor. Chris Hansen with Paul Hastings on behalf of the Ad Hoc Committee of Supporting Counsel.

Your Honor, Mr. Gordon, towards the end of his presentation, got to where I wanted to start, which is there's an intentional conflation of issues here. The TCC and the other parties who are seeking the certification are very clear, they're not really trying to overturn the PI ruling; they're trying to get the case dismissed.

And, to Mr. Gordon's point, we're about to undertake a trial on the motion to dismiss and the Third Circuit should

hear that on appeal on a full record; it shouldn't hear it on a record dealing with the preliminary injunction where there hasn't been a full record.

In some ways, Your Honor, I actually think it would be inappropriate to send this to the Third Circuit as a result of that, sending them an incomplete record when you know that you're about to undertake a trial on a complete record that's going to go up. And, to Your Honor's own point, there may be an issue of mootness that comes along because you're going to be -- if you think about the timing for a briefing argument and decision, and they've said we want to bring that on while trying to get the case dismissed. Well, while you're hearing a trial on the motion to dismiss, you may be deciding that very issue. So we think, from the ad hoc's perspective, that that's inappropriate to send it to the Third Circuit on that basis.

When you go back to your narrowly-tailored ruling from the preliminary injunction perspective, again, it raises that question of mootness. You may or may not need to extend it in order to protect the process that plays out in connection with the motion to dismiss process, as well as the plan process, but it still raises that mootness question. And when you look at the factors for direct certification on appeal, as Mr. Gordon noted, we don't believe that the TCC or any of the other movants meet the standards.

Thank you, Your Honor.

THE COURT: Thank you, Counsel.

Mr. Massey?

MR. MASSEY: Thank you, Your Honor. I won't burden you too long, I know it's been a long day. Jonathan Massey, proposed counsel for the TCC, just a few points.

The notion that this is a -- that the issues here are fact-bound is just a slogan, but, you know, void/voidable, what's fact-bound about the void/voidable argument? We know that the 2021 funding agreement applied outside bankruptcy, we know that it applied in the event of dismissal, we know that the debtor for -- debtor's counsel has represented that the Third Circuit's decision was even foreseeable. Did the Third Circuit change the law? Is that a factual issue? No, those are all legal questions.

I don't want to get out my PowerPoint again. Slides 7 through 10 of my PowerPoint outlined a bunch of legal questions that Your Honor has framed on the PI. In deciding the PI order, Your Honor recognized these kind of foundational questions about whether this was an actual fraudulent conveyance, whether there's void/voidable, whether you can manufacture financial distress by evading the Third Circuit's mandate, none of that is factual.

Yes, there will be a trial on the motion to dismiss and I'm very glad to hear the debtor's intent in creating a full record because you're about to hear now, or very shortly,

all the efforts that are being made to create this full record that the debtor is now in support of, but the point is there are distinctive legal questions which will not be affected by the motion to dismiss trial. And, actually, Mr. Gordon even said, when it comes to the sort of -- the financial distress legal question of whether you can shoot first, file for bankruptcy, and then analyze what your financial distress was after the fact, Mr. Gordon said, well, that rule wouldn't make any sense, but that's the whole point, it's a rule. That's going to be -- actually, the Third Circuit seemed to express support for that rule in SGL Carbon. But, in any event, that's an issue that's distinct from the motion to dismiss.

The next point I want to make, the debtor's argument that controlling precedent exists, and in fact they -- if you look at slide 12 -- I don't want you to look at their slide 12, but I'll just tell you it says debtor agrees LTL provides binding guidance. In their view what that means is, yes, the Third Circuit told us exactly what to do, it said in Footnote 18, surrender the 2021 funding agreement and create this void/voidable theory; that's what the Third Circuit's controlling decision is, in their eyes. You know, that's almost -- it's almost a parody. That proves the reason why the Third Circuit -- why there should be certification, why the Third Circuit should decide that question because, if that's what they think the Third Circuit means and the rest of the

world -- not just the TCC, but the U.S. Trustee, the State Attorney's Generals and everybody else reads the Third Circuit decision quite differently -- then I think certification, they've proven our case.

The last point -- well, last couple points they said, wait for the motion to dismiss because that's where all the real issues are going to come up. And, as I said, there are legal questions, which are separate, but even if you look at their slide 16, they say, oh, well, they're making the same arguments on the PI that they made in the motion to dismiss. That's what I was trying to say before, there's this inter-linkage, which actually wasn't present in LTL 1.0, between the PI and the motion to dismiss. As Your Honor recognized when you read your decision on the PI order, it turns on the likelihood -- the probability of success of reorganization, which in turn relies on their compliance with the Third Circuit.

Mr. Gordon had the scenario that there might be two appeals simultaneously and that somehow would be problematic. In our view, that's quite easy: they would be consolidated. I mean, if there was an appeal from the PI order and then there was a subsequent appeal from a motion to dismiss order, weren't mooted or whatever, the Third Circuit would just take them and consolidate them. That's not a big deal.

When Your Honor certified the New Mexico and

Mississippi PI order, the Third Circuit sat on that, didn't rule on it because it knew it was going to do something with the dismissal. I mean, the Third Circuit is quite able to stage things and coordinate things as it wants. And, you know, the point I made before, if you don't certify, you're making the decision for them.

The other last point is this notion that the -- we keep hearing the PI order is going to expire on June 15th, and that's what Mr. Gordon said, and that just raised the question to us about whether they will seek to renew it after that date because, obviously, if they don't, that would be something that they could say on the record and that would clarify things, and that might change the complexity of the PI order. If they intend to renew it for another period of time, then I think it points up the need to certify the existing order because that will provide guidance on whatever subsequent orders are coming down the pike.

So, you know, that's -- if they would like to clarify whether they will be seeking an extension, that would be relevant, I suppose, to how Your Honor might think about this. But if the PI is going to be extended, they're going to seek further extensions, then I think it just makes it more appropriate to hear -- to get guidance, authoritative guidance on the existing PI order.

Thank you very much.

THE COURT: Thank you, Mr. Massey.

All right, thank you all again, well-argued.

There are two premises put forward by the TCC with respect to the certification motions which I have trouble with; one is that I should, essentially, not stand in the way, let the Circuit decide what issues it wants to address. To me, that flies in the face of the role the Court plays under 28 U.S.C. 158(d)(2). We're a gatekeeper.

There would be no purpose served by the Court certifying an order for immediate review if I was just to stand aside and let them decide what they want to keep. I believe Congress, in implementing the process and the circuits depend on the lower courts, the trial-level courts, to act as a gatekeeper, identify which judgments or orders are ready and appropriate for review.

The second issue is that this is really just about which court is going to hear it, the District Court or the Circuit Court. I don't, frankly, envision the District Court hearing the appeals in this matter.

We have an injunction, a preliminary injunction that's set to expire on June 15th. I have a motion to dismiss -- several motions, seven, I think, that will be tried. And, as I've said before, if I grant any one of the seven or all seven -- I can't imagine picking and choosing, but if I grant the motions, then it's all academic, there's no case. If I

deny the motions, it doesn't mean the injunction continues because that's already terminated. I have to affirmatively extend the injunction, which requires a factual showing, probably addressing the very concerns that the Third Circuit identified as being problematic from the first go-around, in which case there's a new order.

And I will tell you right now that, in the event I were to deny the motions to dismiss and extend the injunction, I can't see not certifying it for the appeal to the Circuit at that point, but that's -- the Circuit will benefit from a full record, the Court will benefit from a full record, and the Circuit will benefit from not having issues that are moot. There will be a new order entered extending -- possibly extending the injunction based on an evidentiary record that may be conjunction with the motion to dismiss -- we'll have to discuss that -- or there won't be anything in front of the Circuit because I will dismiss the case.

It makes no sense to me. It does not further advance this case. In fact, to me, it does the opposite; it places hurdles for an effective appellate review to certify the existing order at this juncture.

While I and my law clerks think that the issue as to whether 362 or 105 serve as a proper basis to stay third party actions is interesting -- you know, to some extent, we're all nerds, you know, these issues interest us -- but I'm not sure

it rises to the level of public importance, at least out of the context of dismissal of this case, and nor do I think that there's a lack of controlling law. Yes, we have LTL I, the Third Circuit's opinion, and we have McCartney. If I am acting outside the scope of those decisions, if I have acted to date outside the scope of those decisions, well, that's what appellate review will be and the Circuit will make it clear at that point in time, if it ever gets there.

So, for these reasons, I don't believe the criteria under 28 U.S.C. 158(d)(2) have been satisfied, it's without prejudice to raise these issues again with further judgments or orders, and I'll ask debtor's counsel to submit forms of order.

So what's left for today, I have a ruling to read and also a discussion about what's happening on the trial.

Ms. Beville?

MS. BEVILLE: And I apologize, Your Honor, I don't want to take us backwards, but in the effort to be most efficient going forward, you ordered in connection with the intervention that notice be sent out to the individual claimants seeing their authority and consent, I just wanted to confirm for the record that that required affirmative consent and authority or -- I just wanted to make sure that part was clear.

THE COURT: Well, okay, let me clarify it. I required that the attorneys who are the -- who compose the

committee at this juncture, that they certify that they have notified their clients that they are engaging -- two things -- they have to certify that they have the authority under their current retention agreements to represent their clients in this court and that they are to notify the clients that they've taken a position in support of -- that they are, in doing so, taking a position in support of the debtor's proposed plan or term sheet or tentative agreement.

MS. BEVILLE: Okay. And so, to be clear, you are not requiring that the clients --

THE COURT: No.

MS. BEVILLE: -- themselves respond affirmatively --

THE COURT: No --

MS. BEVILLE: -- just that the law firms --

THE COURT: -- that they have notified.

MS. BEVILLE: -- represent to you affirmatively that they've notified the clients?

THE COURT: For my purposes, that suffices.

MS. BEVILLE: Okay. Thank you, Your Honor.

THE COURT: You're welcome.

All right, do we want to discuss the trial?

Good afternoon, Mr. Winograd.

MR. WINOGRAD: Good afternoon, Your Honor. Michael Winograd from Brown Rudnick; I'm proposed counsel for the TCC.

Your Honor, we have, as Your Honor instructed, met

and conferred on behalf of the TCC with debtor's counsel and the U.S. Trustee, and several others participated in the emails as well. We have exchanged proposed schedules back and forth, which many of the deadlines are not actually far off. It appears there are two sticking points, the hearing date and the date for the motion to dismiss opposition brief.

And, if I may, Your Honor, I'd just like to --

THE COURT: The date for --

MR. WINOGRAD: The motion to dismiss objection by -- the date -- the deadline to file --

THE COURT: For the written submission?

MR. WINOGRAD: For the written submission, yes, Your Honor.

THE COURT: Okay.

MR. WINOGRAD: I apologize.

THE COURT: No, that's all right.

MR. WINOGRAD: And, if I may, Your Honor, I'd just like to start with the hearing date. And I'd like to really just point out, you know, why this comes up. We had thought this was resolved at the last hearing, debtors disagree with that and, you know, they will present their side, but let me just make three initial observations, Your Honor.

First of all, again, we thought the Court had resolved that this would take place beginning on June 12th at the May 3rd hearing when it indicated there were constraints in

the Court's calendars, that a limited amount of extra would allow for what the Court called limited discovery, on page 149 of its opinion. It instructed a meet-and-confer. Your Honor, I took that to mean a meet-and-confer on the schedule with respect to the pretrial schedule.

And the Court said if there is no agreement ultimately on the week of June 12th that we'll just proceed on May 23rd. And, again, Your Honor, we are prepared to proceed on May 23rd.

The next point, Your Honor, that I want to make to you is really a, I think, dispositive one. The Third Circuit came out today and denied our petition for a writ and, in doing so, it expressly said, the very first thing that it said is we're denying this extraordinary relief to allow the Bankruptcy Court to continue on the expedited basis set by the Bankruptcy Court.

Now, why did it say that? If you look to what LTL told the Third Circuit yesterday, on May 8th, in its submission, it said two things. Number one, on page 12 of its submission, that the Bankruptcy Court kept it on a tight time frame with respect to the preliminary injunction. It then went on to talk about the motion to dismiss at pages 14 and 15, and it said, motions to dismiss have been filed -- and I'll quote -- "and the Bankruptcy Court has set aside June 12 to 16, 2023 for a hearing."

That is what LTL told the Third Circuit. The Third Circuit denied a writ, specifically saying to allow these proceedings on the motion to dismiss to continue on an expedited basis.

Your Honor, I would submit that is dispositive and ends this inquiry and, at the very least, if not putting it on for May 23rd, we should take the time Your Honor has set aside already on June 12th. And that is even more pronounced now for the reasons others have articulated with direct appeal for the preliminary injunction being denied and those issues being merged into the motion to dismiss hearing.

I won't get back into the merits that were set out in four different letters on April 25th, April 28th, May 1st, and May 2nd that were submitted with the Court, or the argument that happened on May 3rd addressing the merits of why we believed that we shouldn't even stray at all from the statutory time period of 30 days.

I will add, however, Your Honor, that the limited discovery that is being asked for in connection with the motion to dismiss only confirms that June 12th is plenty of time.

We asked for targeted discovery, the TCC asked for targeted discovery of LTL, seven document requests, in addition to standard financial due diligence that is turned over in a matter of days, typically. Those seven requests, three of them asked for specific documents: One asked for documents they say

they don't have; one asked for documents over which they appear to continue to assert a common interest with respect to the voidability or termination of the 2021 funding agreement; one which documents a new witness that they propose, the Vice President for Tax of J&J intends to talk about.

The financial due diligence, Your Honor, just to -- I hear reactions on the other side -- the deadline for producing documents which would include all those, there is no disagreement on that deadline between the two parties. The deadline to complete document productions was May 17th; that was proposed by LTL and that was agreed to by the TCC. None of this discovery is burdensome.

With respect, Your Honor, to one additional -- I should point out that there was one additional document request that was served on the counsel that signed the plan support agreements and those are very targeted to go to whether these firms actually are committed to litigate these cases in the event the bankruptcy didn't happen, the subtype of cancer that their clients have, and the legitimacy of those claims.

We were told by at least one counsel already -- we just served these yesterday -- by at least one counsel who is one of the firms that represents among the higher number of claimants that he will not produce any of this on grounds of privilege. That was told to us by email this morning.

For their part, Your Honor, LTL has again, maybe to

distract from the actual relevant facts here, asked for a deluge of information. They've asked for 17, I believe, requests for production, 24 interrogatories of us. They've repeated many of those to other counsel. But at the end of the day, Your Honor, again, we've all agreed on a common date for producing all of this.

With respect to witnesses, Your Honor, there are seven fact witnesses that LTL proposes. We've added two, their CFO and the president that they left off the list. Six or seven of those have already been deposed. There's one new witness, there's one unnamed, which we don't know that they have -- they haven't given us a name, they just told us somebody, an additional person from our committee -- but it seems like all of these have already been deposed in the preliminary injunction proceeding. One, their president was deposed in connection with the last motion to dismiss, there may be some incremental amount of information we need from him.

But at the end of the day, Your Honor, four days for the hearing is plenty, I don't think there's a dispute over that, and over a month between now and then, again, is plenty based on the facts before us.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Gordon?

MR. GORDON: Greg Gordon on behalf of the debtor.

The first thing I was going to say is that we've made progress, but I'm not sure after having heard that.

I did want to approach. I want to provide a chart that actually Mr. Winograd provided to us with the schedule --

MR. WINOGRAD: Sure.

MR. GORDON: -- because I think it would be helpful to walk through this. May I approach, Your Honor?

THE COURT: Yes, please. Thank you.

MR. GORDON: So before I respond to some of the substantive points, I wanted Your Honor to see this schedule because what this reflects is we had the meet-and-confer, the debtor laid out a schedule that it was proposing that would have assumed a hearing on June 20th. And we focused on that because I think Your Honor at the last hearing, although you said June 12th, you also said you had some availability on the 20th, and we had understood your instruction to be you need to go meet and confer and come back, and we'll talk about it again. But you can see how expedited this schedule this is.

And one of the things I'll note right off the bat is we agreed on the date for exchanging initial discovery requests, which was yesterday, and I did see -- I forget now whether it was by email or pleading -- today that the Committee of States wants to serve discovery tomorrow. So we have another party that wants to serve discovery, which would actually be on May the 10th.

We've agreed to identify our expert witnesses tomorrow. The TCC is proposing they don't have to identify theirs for another three days. And then we had actually put in that -- if you're tracking this with me, Your Honor -- that we thought that maybe a deadline should be imposed for the filing of motions to dismiss because they keep -- they were coming in in various batches and I think the most recent was maybe May the 2nd, a couple came in then.

Now, it looks like the committee's position is that's not necessary, and maybe it's not, but we have a concern, obviously, that we're going to move down this schedule and all of a sudden two or three more motions to dismiss would come in. So I guess we're suggesting there should be a deadline. It would be nice for all parties to know that we're done with the motions coming in.

And then you can see there's a deadline for responses and objections, which the committee is proposing to accelerate that five days earlier than what we had proposed. I think we can probably live with that.

And then we have a deadline to complete document production and interrogatories. And I would just note that, although both sides are saying right now that's an acceptable date, I mean, that's only eight days from today. And there has been substantial discovery that's been exchanged and now we know that the States are going to have some additional

discovery coming in tomorrow.

So I don't want Your Honor to have the impression that we're proposing some very lax schedule that's well beyond what would be required. And, you know, I appreciate the fact that Mr. Winograd is talking about the targeted discovery that he has, but I've noticed in the discovery he served when he targets certain documents, but then he says, but you've got to prepare -- you've got to identify all your privileged documents and provide a privilege log; we want all transmittal letters, cover letters, transmittal emails; we want all exhibits, we want all enclosures, all attachments; we want all drafts, all revisions, all modifications, all versions, all supplements. And, of course, they want ESI.

And so, to me, it would be an extraordinary achievement if within eight days or so -- and longer in a couple cases, shorter in others, if we get the States' discovery, that we could actually produce within that time frame.

And then you'll see deadline for expert reports, we're very close on that. They actually proposed a couple additional days to allow the fact discovery deadline to be completed. You can see only five days for rebuttal expert reports.

And then the motion to dismiss opposition, the May 16th date, as we understand their position, they're just fixing

on what Your Honor said at the last hearing, and we took that to just be a reference to the fact that when this matter was noticed by the other side, they noticed it for the 22nd. Normally, the deadline is, what, seven days before --

THE COURT: Correct.

MR. GORDON: -- six or seven days before.

What we have proposed is May 29th, which would be, what, over two weeks before the hearing, if it starts on June 12th, and of course three weeks or more if the hearing is later than that, and we need more time. May 16th is going to be very difficult for us because we've got -- at the moment, we've got seven motions to deal with. Now, admittedly, there's overlap, but it's still seven different motions and that's a lot of work for us. And of course we've been subsumed with the mandamus and certification and everything else.

So we are proposing May 29th, which, again, should give them plenty of time to have that and plenty of time to reply.

So you can see the proposed fact discovery deadline. We proposed May 31, they're at May 24. Again, an incredibly expedited schedule. Expert discovery deadline would be June the 6th. And then they've proposed May 22nd for replies and, of course, we're suggesting -- for a motion to dismiss reply, we would suggest that be pushed a few weeks. And then just going on down.

And so I wanted to spend some time to go through that, number one, so that you can see we're trying to come up with dates that we think are reasonable, but very expedited. And, you know, standing here today, I have a hard time personally seeing how we're going to meet these dates, but we're committed to doing our best to do that, and that in part is going to depend on our ability to make progress in meet-and-confers to narrow the scope of some of the discovery to deal with the fact that you've got discovery now served on a lot of law firms and the like, you've got the states getting involved. There's a lot of different parties and firms involved, all who have to sort of support this schedule and agree to abide by it and that's not going to be easy.

And then the hearing date, as you heard from Mr. Winograd a few minutes ago, they want to stick with the June 12th date. And I just want to remind Your Honor that on June the 12th Mr. Murdica is not available that day, Ms. Brown is also not available that day. And June the 20th, although we propose this hear for purposes of putting together the construct, the problem we have with that date as well is that Mr. Brown won't be available then. So I want to give Your Honor an update on Valadez and the scheduling.

So what the judge has told the parties is that he wants the trial to start May 15th and he's told the parties he wants it to be ready to go to the jury on June 22nd. And if

that schedule holds -- and he says he's committed to that -- then Ms. Brown would be available the following week, that week of June the 26th.

Now, the other side is strongly opposed to this for reasons we don't fully understand. We can't see why a week or two on issues of this magnitude would make that much difference.

And it's easy for them to say that you've got multiple law firms who can work on these matters, but Your Honor knows from the first dismissal and PI hearings that Ms. Brown played a very important role in connection with that. And, to me, it just wouldn't be fair to us that based on a request that one of the counsel on their side made to proceed with a trial that she's rendered unavailable, particularly when we know that the judge in the State Court case has said he's committed to having that trial done -- and think about that, May 15th all the way through June 22nd -- he's committed to having it done and presented to the jury then, which would make her available the following week.

So that's a long way of saying that the 12th doesn't work for us because of her unavailability and Mr. Murdica's unavailability, who's one of our witnesses. The 20th doesn't work for us that week because of Ms. Brown's unavailability, but that following week would work and we would ask for Your Honor to move the date until then and, if Your Honor would be

willing to do that, I think that would allow us -- or provide us with some additional flexibility to put a little more time between some of these other deadlines and make these more manageable than they are here. This is an extremely tight time frame as it's laid out.

THE COURT: All right. Thank you, Mr. Gordon.

MR. GORDON: Thank you.

THE COURT: Mr. Winograd?

MR. WINOGRAD: Your Honor, Michael Winograd from Brown Rudnick, proposed counsel for the TCC.

Your Honor, if there are scheduling difficulties, then we would take Your Honor up on the idea that if the parties can't agree, what Your Honor said last time, we'll make it May 23rd. We agreed -- when Your Honor proposed June 12th, we agreed to it.

Yesterday -- I will say it again -- yesterday, counsel for the TCC filed a brief --

MR. GORDON: The debtor.

MR. WINOGRAD: I'm sorry, counsel for the debtor filed a paper with the Third Circuit talking about how this is on an expedited schedule and the Court has said aside June 12 to 16 for the motion to dismiss hearing. That's what they told the Third Circuit. And the Third Circuit, apparently, latched onto it and said I'm going to deny this writ and allow the Bankruptcy Court to continue on that expedited basis.

There is no overwhelming discovery hear. They even agreed preliminarily to the June 17th discovery -- complete deadline for completion of document productions and interrogatories.

With respect to the witnesses, they're all their witnesses. We're the ones deposing them, they have to sit there and defend them, but most of them have already been deposed, almost all of them. There simply isn't a lot of substantive discovery to do.

And it is ironic that they have asked us for more discovery than we've asked them. Again, other than financial due diligence, which is pretty standard, which we have discussed coming down the pike, which they had done the last time and it usually takes a matter of three, four, five days to do it all, we told them about that in advance. We're talking about a handful of targeted discovery requests that actually request unredacted copies of X; that's one request, for example, lots of them like that. They ask, on the other hand, for far more discovery, even though it is their burden, it is their good faith at issue, it is their financial distress at issue and they seem to think we have more information on that than they do.

In any event, Your Honor, let me turn -- again, we've agreed on a document production deadline, one month to do this is plenty. This is limited, narrow discovery for facts that

have come up since the January 30th ruling until now that haven't already been covered in the preliminary injunction proceedings.

I will say just briefly, Your Honor, with respect to the motion to dismiss opposition brief, I don't see any basis -- Your Honor had said that Your Honor's calendar is congested and suggested June 12th, I don't see any basis based on that to push off their deadline of May 16th to file an opposition.

We need to see what their case is. It's their case, it's their good faith, it's their financial distress, we need to see their arguments before we can determine exactly the scope of discovery that may be needed beyond what we've already asked for. That needs to happen before discovery is completed.

And by the way, Your Honor, there cannot be any doubt that the debtor already knows what it's going to say in that brief. This is not something that has come up quickly. They have planned this, this entire bankruptcy was planned, and they should know exactly what that opposition is going to say. I would venture to guess that it's probably already drafted, Your Honor.

Thank you, Your Honor.

THE COURT: All right, thank you.

All right. There are no easy choices -- Mr. Malone?

MR. MALONE: Your Honor, Robert Malone of Gibbons on behalf of the States of New Mexico and Mississippi. I rise

only because I'm not going to interfere with the schedule. We're Switzerland as far as that, in fact. Probably for once, I'd probably agree with the debtor that the June date is appropriate.

As the Court may understand, when you represent states, it takes a while for people to give sign-off on certain things, and I only received the sign-off of one of my two State Attorney Generals while we're sitting here in court.

We will be filing tomorrow, because I'm here, a motion to dismiss. That motion to dismiss adopts a lot of the other arguments of the Talc and other people, but to the point of what we're putting in there that may be unique is the State -- the sovereign rights of the States, which I think is more of a legal issue. I don't think I'll be seeking independent discovery from the debtor. Of course, if they seek it from us, there may be some back-and-forth, but as far as I can see, we've got plenty of time to get that to them. It is not a very long motion, it doesn't have multiple exhibits. Again, it adopts everybody, but I wanted to be heard to be included within it and we'll abide by whatever the schedule is that this Court orders today. But we will be the number eight, I guess, as far as motions to dismiss in this matter.

Thank you.

THE COURT: All right, thank you.

See, and I was going to say, I can't imagine who else

would be filing.

(Laughter)

THE COURT: But I can't imagine, if there are more filings, that it's going to raise any issues that haven't been addressed in the seven or eight prior ones.

Folks, I'm looking for blank dates on a calendar; there aren't many. It's a struggle in June.

To say let's start -- do it on May 23rd is just a nonstarter, it's just not practical. We'd get nowhere. We'd get -- we'd get argument, but it's not meaningful. To suggest that the Circuit would have granted the mandamus if they knew I was going to do it a few days later is also nonsensical. I don't think they reach decisions based on a week one way or the other, I would hope not. Six months, three months, yes; a week, it can't be.

So what I'm going to suggest is I'll break it up. I'll give a little bit more time, not what the debtor wants, not what the committee wants, but I'll break it up. I'm going to dedicate four days with a fifth in reserve that I could squeeze if you all get very verbose. What I will do is push it later. I will give the June 15th and 16th, and June 21st and 22nd. Those are four days. That Friday, the 23rd, I can't give, it's an important Judges' date, but I have that Monday in my back pocket, the following, the 23rd.

So it's June 15th, June 16th, June 21st, and June

22nd. So we're talking about -- what are we talking about -- ten days later, two weeks later. If Ms. Brown finishes the trial earlier, she can accompany, if she can be squeezed out a day or two, if she can be there. It addresses Mr. Murdica's issue -- well, I don't know, I don't know how long he's away. But we'll start with the 15th and 16th, and we'll continue the following week.

MR. MOLTON: Your Honor, David Molton, excuse me for interfering --

THE COURT: Yeah.

MR. MOLTON: -- proposed counsel for the TCC. Can we confer? I mean, there are folks not just on my left side, but on my right side who have scheduling issues as well --

THE COURT: I was going to offer that --

MR. MOLTON: -- and -- yeah, and more than just one.

THE COURT: Yeah.

MR. MOLTON: So --

THE COURT: What I wanted to provide you with is -- so I have the 15th and the 16th, I have the 21st and the 22nd.

I have also -- let me give you these days. I have the week of the 26th as well. I can probably carve out the Monday. I have a hearing on the 27th, an omnibus date for Whittaker, Clark, I can probably move it. I mean, I'll try to accommodate the following days as well, that following week as well.

MR. MOLTON: Okay, if you can give us just a few minutes, Your Honor.

THE COURT: Well, what I was going to suggest is work -- you know, we're going to be back here next Tuesday.

MR. MOLTON: Yeah.

THE COURT: Why don't you all confer on both sides --

MR. MOLTON: That's fine.

THE COURT: -- and then come up with a workable schedule.

As far as the brief, my feeling was it should be May 26th, so that -- and if this is the schedule that works, that puts it far in advance.

MR. MOLTON: Yes. Judge, just from my personal -- the 26th of June is really --

THE COURT: No, no, May 26th.

MR. MOLTON: No, no, no, I'm just talking about the trial date --

THE COURT: Oh, yeah.

MR. MOLTON: -- that that may be -- that is a date I can't be here, but we'll discuss with other folks.

THE COURT: July is very open, but I don't want to touch that, July, but I could be far more flexible in July. But, in June, I'm giving you four or five dates that can work.

MR. MOLTON: Yes, Your Honor.

THE COURT: Okay, all right. And then if we need to

have -- we don't have to wait for the 16th, if you want to have a call, we can do that as well, just to refine it.

All right. Now, no PowerPoints, just a ruling on the future claims rep motion. Not double-spaced, it shouldn't take too long. All right.

With respect to the debtor's motion to appoint Randi Ellis as for the Future Talc Claims Representative, the Court renders the following ruling.

The Court has jurisdiction under 28 U.S.C. Section 1334, it's a core matter under 28 U.S.C. Section 157(b), and jurisdiction is also found 11 U.S.C. 524(g).

I learned about 17 years ago back in baby judge school that the desire to avoid appeals is not a proper foundation for judicial decision-making. After listening to oral argument last week, last Wednesday on this motion, and reviewing all of the information in the written submissions and exhibits, including all supplemental submissions and exhibits, it became evident to the Court that the only reason not to appoint Ms. Ellis as the FTCR in this case would be to avoid potential appellate practice and a disruptive impact on the reorganization and potential plan process, to the extent we get that far.

Indeed, my law clerks and I agreed that the easiest course and pathway of least resistance would be to simply abide by the calls for the appointment of a different FTCR. However,

we also agreed that to do so would be a disservice to Ms. Ellis, her constituency of potential future claimants, the Court, the bankruptcy estate, and possibly our judicial system as a whole where decisions must be made after a careful review of the record and not simply premised on litigation strategy-driven accusations which provide unfounded.

Put simply, the Court finds nothing in the record presented which establishes that Ms. Ellis is unqualified, nor incapable of satisfying all of her fiduciary obligations to protect and advance the interests of all Future Talc Claimants, however ultimately defined. Quite the contrary, Ms. Ellis's training, considerable experience, and nationwide reputation for her work in the mass tort area has gone unchallenged both in the first LTL case, as well as the present. Indeed, she received nearly universal plaudits and praise for taking on the role of the FTCR in the first case. She was the consensus election after a judicially-crafted selection protocol, which offered ample opportunity for discovery and consideration of alternative candidates.

So what has changed since the first case? Well, it has not been either her work product or her performance as the FTCR. It appears uncontested that copies of her work and findings, including those of her routine professionals, were sought by the TCC professionals even after the Circuit directed dismissal of the case. Moreover, her professionals were

implored to continue their work.

What this Court finds that really has changed is that Ms. Ellis engaged in communications with counsel for J&J and, presumably, that counsel also served as counsel for new JJCI or, presently, Holdco, which entities were the very funding sources under the 2021 funding agreement. These communications came at a time when the first case was about to be dismissed after the Circuit's ruling, but during a period of time in which this Court implored all stakeholders to continue settlement discussions. These communications, without meaningfully more, can hardly be viewed as a disabling conflict.

The Court notes that the communications evidence that Ms. Ellis was made aware of the debtor's intent to re-file a new Chapter 11 case, and was asked by counsel to support the re-filing effort and to execute a declaration to that effect. There is no dispute that she chose not to execute such a declaration.

The Court turns to what has not been established and has been raised only through unsupported innuendo. Specifically, it has not been established that Ms. Ellis had any involvement in the debtor's decision, planning, or implementation of its decision to re-file the Chapter 11; or, number two, that Ms. Ellis -- it has not been established that Ms. Ellis engaged in any negotiations whatsoever with J&J,

Holdco, the debtor, or anyone with regard to any terms for any plan support agreement or term sheets, including any dollar figures attributable to the overall settlement, the percentage shares to be divided among present or future claimants, or detailed compensation matrices.

Rather, the evidence confirms that Ms. Ellis was not in a position without further review and investigation or study to agree to such terms. How could she inasmuch as her work as the FTCR in the first case was coming to an end and no one had given her assurances that she would be selected as the FTCR in any future case, certainly not the Court.

The record is also lacking any evidence that she sought or negotiated for any position as the claims administrator post-confirmation in any second filing. Rather, all evidence points to a rather nonsensical decision by others to include her name as a placeholder without her knowledge or consent.

In sum, the record is clear and this Court so finds that, while at some point in time she was made aware of the debtor's intent to re-file a Chapter 11 case, Ms. Ellis never made a commitment to support a new filing or any specific terms put forward by the debtor; instead, she refused to sign off on any such agreement or declaration.

This Court disagrees with those parties who contend that Ms. Ellis had a duty to disclose voluntarily the debtor's

intent to re-file. Her fiduciary obligations ran to her constituency, Future Talc Claimants, in the first case, and she was and remains obligated to here consider and investigate all options of recovery.

The mandate for independence and loyalty under the Imerys standards compels her objective analysis and decision-making.

In In re Imerys, the Third Circuit clarified the standard for appointment of an FCR, and I quote: "The FCR standard requires more than disinterestedness. An FCR must be able to act in accordance with a duty of independence from the debtor and other parties in interest in the bankruptcy, a duty of undivided loyalty to the future claimants, and an ability to be an effective advocate for the best interests of the future claimants." That's In re Imerys, 38 F.4th 361, 374.

The Third Circuit noted that the standard is akin to those employed for guardian ad litem, yet in other contexts. This Court has employed the same standard in considering the present motion and, as instructed by the Circuit Court, has bottomed its analysis on Ms. Ellis's ability to serve the future claimants' interests effectively and impartially.

So I return to the question of what has changed. Well, I believe Mr. Thompson was correct in his assessment, Ms. Ellis has demonstrated a willingness to consider bankruptcy as an effective pathway to protect the interests of future

claimants; that recovery under a settlement trust, pursuant to a plan reorganization, may offer a more fair and equitable remedy for future claimants in lieu of recourse through exercising Seventh Amendment jury trial rights with the attendant risks and delays. This is hardly surprising for a Future Claims Representative.

The willingness to explore and consider options lay at the heart of an FCR's fiduciary obligations and can never serve as the basis for a disabling conflict or give rise to an appearance of impropriety.

The independence demanded of Ms. Ellis under the Imerys standard require that an FCR be free to take differing views about the proper pathways for protecting, as a fiduciary, the interests of her constituency.

No, what has changed in this case is merely buyer's remorse for certain objectors who once supported Ms. Ellis unequivocally, but now find that she's independent and willing to consider all options, even those presented under a new filing.

Here, the TCC objects to Ms. Ellis's appointment and asserts that an appearance of impropriety exists, excluding her from consideration. As discussed, the FCR's support of the bankruptcy option does not create a conflict; it's an opinion based on what she thinks is best for her constituency, something which she was specifically ordered and appointed to

consider.

I referenced New Jersey State Court Zukerman v. -- Z-u-k-e-r-m-a-n -- by Zukerman v. Piper Pools, Inc., 232 N.J. Super. 74, Appellate Division, (1989), which said, merely "because a settlement is rejected by a guardian ad litem is not in and of itself a sufficient basis to warrant removal. Nor would it establish the type of conflict contemplated by our rules. More is required."

Well, there is case law that indicates that the appearance of impropriety must have a reasonable basis and must be more than simply a fanciful possibility.

The New Jersey Appellate Division succinctly explained that the appearance of impropriety must be something more than a mere fanciful possibility, it must have a reasonable basis, and the conclusion must be based upon a careful analysis of the record. That's McCarthy v. John T. Henderson, Inc., 246 N.J. Super. 225, Appellate Division, (1991).

The Court overrules the objections raised. In doing so, the Court finds that Ms. Ellis's retention raises no specter of impropriety and wholly satisfies the standards enunciated by the Circuit in Imerys.

In choosing not to undertake any further consideration of alternative candidates, the Court is mindful of the cost and delays which would be required to do so.

Likewise, the Court is mindful that Ms. Ellis faced considerable hurdles in securing competent and independent professionals who did not have conflicts or a desire to avoid the scrutiny which accompanies this case. It makes little sense to place a new FTCR in such a position once again.

In addition to the time that would be necessary for that professional to come up to speed, it makes little sense to force a new professional to incur the delay attendant to obtaining new professionals.

I make the appointment today with the proviso for all concerned that I cannot at this juncture envision approving Ms. Ellis for any role as a post-confirmation administrator for any confirmed plan, again, assuming we get there.

I'll ask debtor's counsel to submit a form of order.

Thank you. Court -- Ms. Richenderfer, I was just about to end it.

(Laughter)

THE COURT: You got me.

MS. RICHENDERFER: I apologize, Your Honor, and I rise, believe me, to address something that I do not like to have to bring before the Court.

Your Honor, may I approach?

THE COURT: Yes.

MS. RICHENDERFER: Your Honor, during both the first case and the second case, you have commented on the world is

watching us --

THE COURT: Yes.

MS. RICHENDERFER: -- and you have also commented on and chastised, and I'm not going to comment one way or the other, on certain statements that were made by plaintiffs' counsel. Unfortunately, Your Honor, the United States Trustee has to come before you and complain about certain things that J&J is saying on its website regarding the United States Trustee's Office.

Your Honor, at the top of it, the website there is listed. The cover page of this website states, "From time to time, the topic of talc will be in the news. This is the Johnson & Johnson home for company statements on major news events related to talc."

The first statement made by Mr. Haas, who I think, unfortunately, has left, Your Honor, and I highlighted and underlined, he talked about a, quote, "common interest fee agreement between the United States Trustee's Office and a group of minority law firms that oppose the plan."

Your Honor, I'm just appalled to suggest that there was a fee agreement. Mr. Haas is an attorney, he knows what these words mean. He stands right there behind my left shoulder and listens to everything that is said in this courtroom. Sometime between 11:30 last night, when I copied the first statement, and 7 o'clock this morning the second

statement was made, "common interest agreement." I don't know who or why they changed, but that's still not correct, Your Honor.

Down below, I quoted from the transcript. On April 18th, Mr. Gordon brought up that the committee asserted a common interest privilege with the U.S. Trustee's Office. In response, I stated definitively, there is no common interest agreement. Your Honor, I think that Johnson & Johnson cannot be allowed to be making these statements on the record about the Office of the United States Trustee.

We debated on what to do with this, whether we should have referred it elsewhere. We wanted instead to bring it to Your Honor's attention. But the fact was that, on May 2nd, they wrote that we had a common interest fee agreement, which is just appalling that those phrases would be used. Mr. Haas knows better than that and it's just beyond -- and I just want to put an end to it right now.

The debtor is not happy that the U.S. Trustee is taking certain positions in this case. We look at the case and we determine what we need to say and the positions we need to take and the questions we need to ask, but the fact is that they're going to start making accusations about us in response to this? This is, I think, untenable, Your Honor, and I needed to bring that to your attention.

THE COURT: No, I'm glad you did. I think I would

note, with respect to common interest privilege, I think you were involved in a case in Delaware as a practicing attorney, Simplex or something along those lines, where the court ruled that the common interest privilege, it can't come about by agreement. It's a common law privilege, it either exists or it doesn't, you cannot make such an agreement.

So, but I can -- or Suttletex (phonetic) -- it was a case, I have to --

MS. RICHENDERFER: Your Honor, you have me, I have to say, because I think you're talking about a period before I came to the office perhaps?

THE COURT: Yes, yes.

MS. RICHENDERFER: Okay. Your Honor, I don't know what that was all about, but there was no -- there is no common interest privilege --

THE COURT: I think your point has been taken and I'll --

MS. RICHENDERFER: -- especially not an agreement because an agreement entails --

THE COURT: I would --

MS. RICHENDERFER: -- a meeting of the minds, a handshake, a written document --

THE COURT: I don't accept --

MS. RICHENDERFER: -- so even if it arises.

THE COURT: I don't accept that there's been an

agreement. I think the fee agreement may be just poor language or choice, I can't imagine that either, but we'll let Johnson & Johnson and counsel -- do you want to be heard?

MR. STARNER: Your Honor, if I may?

THE COURT: Yes.

MR. STARNER: Your Honor, Greg Starner of White & Case on behalf of J&J. I'll be very brief.

This was brought to our attention yesterday, the reference to common interest fee agreement. It is a typo and J&J merely fixed it, and we informed Mr. Vera of that. So he's in receipt of that, I think he acknowledged that we had fixed it.

The second statement, as I'm just seeing now, it actually is accurate. It does refer to the Trustee's motion and refers to whose counsel testified they entered into a common interest agreement.

I agree that that is a little bit disturbing, but that is an accurate statement. This was what occurred during the deposition of Mr. Molton, so I was there at the deposition. So certainly that statement is accurate.

And we can certainly debate about whether or not a common interest exists, and I acknowledge that the U.S. Attorney's Office has acknowledged that there is no common interest, but it is accurate to say that the TCC did take that position.

So I just want to be very clear about that is a typo that has been fixed and so I don't think there really is an issue for the Court to, you know, take up.

THE COURT: All right.

MR. STARNER: Unless there's any other questions, Your Honor --

THE COURT: I don't. Thank you.

Mr. Winograd?

And here I thought I was a gavel drop after a ruling on the --

MR. WINOGRAD: Your Honor, I'm sorry. Michael Winograd from Brown Rudnick on behalf of proposed counsel for the TCC.

Your Honor, that statement is still not accurate. I defended Mr. Molton in that deposition and, while we referred to a different common interest agreement with a different party, which does exist, we never once identified or claimed there was ever a common interest agreement. What we said over and over again in paragraphs of explanation was that they were looking for communications between the TCC and the UST. It was beyond the scope of the topics that we were informed of for that deposition, it was completely irrelevant to the PI. They've asked for it again, it's completely irrelevant to the motion to dismiss.

We asserted a common interest by virtue of the fact

that we were co-litigants taking the same side with the U.S. Trustee, we never asserted that there was any agreement whatsoever.

And I will go one step further, Your Honor. There was never, despite all the fanfare and this press release, not once before Your Honor has there been an actual objection filed, a motion, you know, to compel.

Second, Your Honor, we just again received document requests for the exact same stuff, communications generally with respect to the 2.0 filing, settlement with -- or talc claimants between the committee and the U.S. Trustee. We are happy to consider those, address those, and we will not raise a common interest if that is the cause of the problem. There are other objections, in any event, but I will say that if Your Honor thinks it's relevant and we are instructed or we decide to produce it, I think that the other side is going to be sorely disappointed. I don't know exactly what they think is there, but I think they'll be sorely disappointed.

Thank you, Your Honor.

THE COURT: All right. We're adjourned. Thank you all.

* * * * *

C E R T I F I C A T I O N

We, DIPTI PATEL, KAREN WATSON and TRACEY WILLIAMS, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Dipti Patel
DIPTI PATEL

/s/ Karen Watson
KAREN WATSON

/s/ Tracey Williams
TRACEY WILLIAMS

J&J COURT TRANSCRIBERS, INC. DATE: May 10, 2023